



**US Army Corps  
of Engineers®**

Buffalo District

Solicitation No.  
DACW49-03-B-0006

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# **MAINTENANCE DREDGING, MAUMEE BAY, TOLEDO, LUCAS COUNTY, OH**

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## **Construction Solicitation And Specifications**

February 2003

MAINTENANCE DREDGING  
MAUMEE BAY  
TOLEDO, LUCAS COUNTY, OHIO

DACW49-03-B-0006

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<b>SOLICITATION, OFFER, AND AWARD</b> (Construction, Alteration, or Repair)		1. SOLICITATION NO. DACW49-03-B-0006	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 6 FEB 2003	PAGE OF PAGES 1 of 2
IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.					
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO. W81EU6-3024-9537		6. PROJECT NO. Maintenance dredging - Maumee Bay	
7. ISSUED BY Department of the Army US Army Corps of Engineers 1776 Niagara Street Buffalo, NY 14207-3199		CODE	8. ADDRESS OFFER TO		
9. FOR INFORMATION CALL:		A. NAME Lorraine McMullen		B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (716) 879-4249	

### SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):  
MAINTENANCE DREDGING - MAUMEE BAY

SOLICITATION AND ITS RESULTANT CONTRACT ARE ISSUED UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM OF THE BUSINESS OPPORTUNITY DEVELOPMENT REFORM ACT OF 1988.

This procurement is subject to Public Law 100-656, under the Small Business Competitiveness Demonstration Act and is 100% Set-Aside for small business concerns.

Work consists of, but is not limited to, finishing all plant, labor, material and equipment necessary to remove and dispose of approximately 100,000 cubic yards of dredged material, other than ledge rock, from Maumee Bay, Toledo, Lucas County, OH in strict accordance with the plans and specifications. Dredged material to be placed in the designated Open-lake disposal area..

Estimated magnitude in terms of physical characteristics and estimated price range is between \$500,000 and \$1,000,000.

BIDDERS MUST SUBMIT PAGES 00010-1 THROUGH 00010-5, THE COMPLETED SECTION 00600 ALONG WITH A BID BOND TO BE CONSIDERED RESPONSIVE.

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>60</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See <u>00800-1</u> .)	
12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS 10

### 13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by 300PM (hour) local time 11 MAR 2003 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☒ is, ☐ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

## OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)		15. TELEPHONE NO. (Include area code)
		16. REMITTANCE ADDRESS (Include only if different than Item 14)
CODE	FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

PAGES 00010-4 THOROUGH 00010-5

AMOUNTS ▶

18. The offeror agrees to furnish any required performance and payment bonds.

## 19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER  
(Type or print)

20B. SIGNATURE

20C. OFFER DATE

## AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA W81EU630249537
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24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
(4 Copies unless otherwise specified)

ITEM 00100

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO  
☐ 10 U.S.C 2304(c) ( ) ☐ 41 U.S.C 253(c) ( )

26. ADMINISTERED BY THE ARMY  
DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, BUFFALO  
ATTN: CONTRACTING DIVISION  
1776 NIAGARA STREET  
BUFFALO, NEW YORK 14207

CODE

27. PAYMENT WILL BE MADE BY

USACE FINANCE CENTER  
5720 INTEGRITY DRIVE  
MILLINGTON, TN 38054-5005

## CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT Contractor is required to sign this document. (If return \_\_\_\_\_ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)

31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA  
BY

31C. AWARD DATE

**SECTION 00010**  
**SOLICITATION, OFFER, AND AWARD (SF 1442) AND BIDDING SCHEDULE**

**MAINTENANCE DREDGING**  
**MAUMEE BAY**  
**TOLEDO, LUCAS COUNTY, OHIO**

**BIDDING SCHEDULE "A"**

**(USE EITHER WORDS OR FIGURES, NOT BOTH)**

Bid on Bidding Schedule "A" will be based upon dredging and disposal of dredged material from the Maumee Bay in the Government-designated Open-Lake Disposal Area, as indicated on the contract drawing.

(See Section 02481, MAINTENANCE DREDGING, Paragraph 3.3.2)

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1	Mobilization and Demobilization		LS		\$_____
2	Maintenance Dredging: Maumee Bay (Station 810+00 to 910+00)	100,000	CY	\$_____	\$_____
Total Estimated Amount (Items 1 & 2)					\$_____

NOTE: The above "estimated quantity" pay items for dredging are based upon total estimated quantity of material available within the "required pay prism" plus a portion of the available "overdepth" material noted below. These subdivided quantities are approximate and do not indicate limitations in channel work areas:

<u>Item No.</u>	<u>Estimated Quantity in Required Pay Prism</u>	<u>Quantity of Allowable Overdepth Material Included</u>
2	80,000	20,000

**MAINTENANCE DREDGING  
MAUMEE BAY  
TOLEDO, LUCAS COUNTY, OHIO**

**BIDDING SCHEDULE "B"**

**(USE EITHER WORDS OR FIGURES, BUT NOT BOTH)**

Bid on Bidding Schedule "B" will be based upon dredging and disposal of dredged material from the Maumee Bay in the Contractor-furnished/Government-approved Disposal Area with the balance, if any, in the Government-designated Open-Lake Disposal area, as indicated on the contract drawing.

(See Section 02481, MAINTENANCE DREDGING, Paragraph 3.3.3)

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1	Mobilization and Demobilization		LS		\$ _____
2	Maintenance Dredging: Maumee Bay (Station 810+00 to 910+00)	100,000	CY	\$ _____	\$ _____
Total Estimated Amount (Items 1 & 2)					\$ _____

NOTE: The above "estimated quantity" pay items for dredging are based upon total estimated quantity of material available within the "required pay prism" plus a portion of the available "overdepth" material noted below. These subdivided quantities are approximate and do not indicate limitations in channel work areas:

<u>Item No.</u>	<u>Estimated Quantity in Required Pay Prism</u>	<u>Quantity of Allowable Overdepth Material Included</u>
2	80,000	20,000

AWARD OF THE CONTRACT UNDER SCHEDULE "B" WILL BE SUBJECT TO THE ACCEPTANCE OF THE PROPOSED CONTRACTOR-FURNISHED DISPOSAL AREA(S), BY THE CONTRACTING OFFICER. UNLESS THE DATA REQUIRED IN SECTION 02481, MAINTENANCE DREDGING, PARAGRAPHS "REQUIRED DOCUMENTS", "REQUIRED FORMS", AND "COORDINATION WITH AGENCIES" OF THE SPECIFICATIONS ARE FURNISHED WITH THE OFFER AT THE TIME OF BID OPENING, THE OFFER UNDER THIS SCHEDULE WILL BE CONSIDERED NON-RESPONSIVE.

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SECTION 00100  
INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

1        BID DEPOSITORY

Hand carried bids must be deposited, prior to the time set for opening of bids, in the bid depository, Contracting Division, Building No. 1, 1st Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

2        PLACE OF BID OPENING

Bids shall be publicly opened in Conference Room "A", Building No. 1, 2nd Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

3        INQUIRIES

For information regarding this Procurement, write or call (Collect calls not accepted) Ms. Lorraine McMullen, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199 - Area Code 716 - Telephone Number 879-4249.

4        WORK PERFORMED BY CONTRACTOR

The successful bidder/offeror must furnish the Contracting Officer within five (5) days after the award, the items of work which he will perform with his own forces, the percentage of the total work this represents, and the estimated cost thereof. (See Section 00800, Special Contract Requirement entitled "Limitations on Subcontracting").

5        GOVERNMENT'S PRIVILEGE IN MAKING AWARDS

The Government further reserves the right to make award of any or all schedules of any bid/offer, unless the bidder/offeror qualifies such bid/offer by specific limitation; also to make award to the bidder/offeror whose aggregate bid/offer on any combination of bid schedules is low. For the purpose of this Solicitation, the word "item" as used in the paragraph entitled "Contract Award--Sealed Bidding--Construction," shall be considered to mean "schedule."

6    52.204-6    DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

(1) Company name.

- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@dnb.com](mailto:globalinfo@dnb.com).

(End of provision)

7 252.204-7001 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING  
(AUG 199)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter "CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will--

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

8 252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(MAR 2000)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit

suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr2000.com>.

(End of clause)

9 52.211-2 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained--

(a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

10 52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the

solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

11 52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

12 52.214-5 SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

13 52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

14 52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

#### 15 52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

#### 16 52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a

contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

17      52.216-1      TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm fixed-price contract resulting from this solicitation.  
(End of clause)

18      52.219-6      NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JULY 1996)

(a)      *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b)      *General.*

(1)      Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2)      Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

19      52.222-23      NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a)      The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b)      The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
_____8.8%_____	_____6.9%_____
[Contracting Officer shall insert goals]	[Contracting Officer shall insert goals]

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Toledo, Lucas County, Ohio

20      52.225-10      NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS  
(MAY 2002)

(a) *Definitions.* "Construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act-Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a

determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

*(c) Evaluation of offers.*

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

*(d) Alternate offers.*

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

21 52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon

as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be 20% percent of the bid price or \$3,000,000.00, whichever is less.-

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.-



(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

22 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

23 52.228-15 PERFORMANCE AND PAYMENT BONDS-CONSTRUCTION (JUL 2000)

(a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

24      52.232-33      PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR  
REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

## 25 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Chief, Contracting Division, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

## 26 252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

## 27 252.236-7008 CONTRACT PRICES - BIDDING SCHEDULES (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for --

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

## 28 AMENDMENTS PRIOR TO DATE SET FOR OPENING BIDS FAR 14.208

The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Solicitation. If the revisions and amendments are of a nature which require material changes in quantities or prices offered or both, the date set for opening proposals may be postponed by such number of days as in the opinion of the issuing officer will enable offerors to revise their offers. In such cases, the amendment will include an announcement of the new date for opening of proposals.

## 29 ARITHMETIC DISCREPANCIES EFARS 14.406-2

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

- (1) Obviously misplaced decimal points will be corrected
- (2) In case of discrepancy between unit price and extended price
- (3) Apparent errors in extension of unit prices will be corrected;
- (4) Apparent errors in addition of lump-sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

## 30 BIDDER'S QUALIFICATIONS FAR 9.105-1

Before an offer is considered for award, the offeror may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

## 31 BID MODIFICATION

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro-rata basis to every unit price in the bid schedule.

## 32 COMPLETION OF BID SCHEDULES

BIDS MAY BE SUBMITTED ON EITHER OR BOTH OF THE BIDDING SCHEDULES. BIDS MUST BE COMPLETE AS TO ALL THE ITEMS ON THE SCHEDULE. FAILURE TO COMPLETE ALL ITEMS ON A BID SCHEDULE WILL RENDER THE BID NON-RESPONSIVE.

## 33 DREDGING AND DREDGE RELATED MARINE WORK

The Contractor shall comply with the provisions of EM 385-1-1. If the Contractor is a currently accepted participant in the Dredging Contractors of America (DCA)/United States Army Corps of Engineers (USACE) Dredging Safety Management Program (DSMP), as determined by the DCA/USACE Joint Committee, and holds a current valid Certificate of Compliance for both the Contractor Program and the Dredge(s) to be used to perform the

work required under this contract, the Contractor may, in lieu of the submission of an Accident Prevention Plan (APP),

- a. make available for review, upon request, the Contractor's current Safety Management System (SMS) documentation,
- b. submit to the Contracting Officer the current valid Company Certificate of Compliance for its SMS,
- c. submit the current dredge(s) Certificate of Compliance based on third party audit, and
- d. submit for review and acceptance, site-specific addenda to the SMS as specified in the solicitation.

#### 34 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of the paragraph entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," contained in the Special Contract Requirements section of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199; Foot of East 9th Street, Cleveland, OH 44114, and Summit Street, Bay View Park, Toledo, OH 43611.

(End of Clause)  
(EFARS 52.2/9108(f)(a))

#### 35 INVOICES (TOLEDO AREA OFFICE)

Invoices shall be submitted in quadruplicate to the Area Office Point of Contact specified in the Section 00800 clause entitled "Physical Data":

#### 36 LIST OF ATTACHMENTS

1. Preparatory Inspection Checklist
2. Initial Inspection Checklist
3. Proposed Contractor-Furnished Disposal Areas
4. Construction Quality Control Management Report
5. Standard Form 24, "Bid Bond" (Sample)
6. Standard Form 25, "Performance Bond" (Sample)
7. Standard Form 25-A, "Payment Bond" (Sample)
8. ENG Form 27, "Daily Report of Operations--Hopper Dredges"
9. ENG Form 4025, "Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer's Certificates of Compliance for Approval"
10. ENG Form 4267, "Report of Operations--Pipeline, Dipper or Bucket Dredges"
11. ENG Form 4288, "Submittal Register"
12. General Decision Number IL020018
13. General Decision Number MI020018
14. Survey Control Data
15. EM 385-1-1, US Army Corps of Engineers Safety and Health Requirements Manual (September 1996)
16. Contractor Accident Prevention Plan Checklist
17. Sample Accident Prevention Plan Template
18. Environmental Protection Plan Template
19. Contractor Quality Control Plan Template

These attachments are located at the end of this Solicitation.

37 PRE-CONSTRUCTION CONFERENCE (FEB 1995)

After award of a contract, a Preconstruction Conference will be conducted between responsible personnel of the Contractor, Area Office and District Office to discuss Government procedures and line authority for contractual, administrative, and construction matters. The successful Contractor will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

38 REQUIREMENT FOR BASIC ORDERING AGREEMENT

If offeror proposes to perform part or all of the work with a hopper dredge(s), failure to have an active Basic Ordering Agreement (See Special Contract Requirement entitled "CERF Implementation" in effect on the date of opening of proposals under this Solicitation, will result in the bid being rejected as not responsive.

39 SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

This solicitation and its resultant contract are issued under the Small Business Competitiveness Demonstration Program of the Business Opportunity Development Reform Act of 1988.

40 SYNOPSIS OF SUBCONTRACT OPPORTUNITIES FAR 5.206(b)

Prime contractors and subcontractors are encouraged to use the Governmentwide Point of Entry (GPE) to publicize opportunities in the field of subcontracting stemming from defense business.

Transmittal of a synopsis are accomplished in the following manner:

- (a) GPE. Transmission must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.
  - (b) CBD. All synopses transmitted electronically to the CBD, other than through the GPE, must be in ASCII Code.
- © Hard copy transmission. When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to the—

Commerce Business Daily  
U.S. Department of Commerce  
P. O. Box 77880  
Washington, DC 20013-8880

41 UNBALANCED BIDS

Bids submitted, that appear to be unbalanced, may be rejected in accordance with the clause entitled "Contract Award--Sealed Bidding--Construction" of Section 00100 - Instructions, Conditions, and Notices to Bidders"

42      WAGE DETERMINATION (Construction)

(a) The Department of Labor Wage Determination Decision referred to in Section 00700 - Contract Clauses of the solicitation is attached hereto and made a part hereof, Decision No. IL020018 and MI020018, and all amendments thereto.

(b) Classifications and rates applicable to this work are those used in the local area in the performance of Dredging on the Great Lakes.



SECTION 00600  
REPRESENTATIONS & CERTIFICATIONS

- |     |              |   |
|-----|--------------|---|
| 1.  | 52.203-2     | CERTIFICATE OF INDEPENDENT PRICE DETERMINATION  |
| 2.  | 52.203-11    | CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS           |
| 3.  | 52.204-3     | TAXPAYER IDENTIFICATION   |
| 4.  | 52.209-5     | CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS |
| 5.  | 252.209-7001 | DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY                         |
| 6.  | 52.219-1     | SMALL BUSINESS PROGRAM REPRESENTATIONS  |
| 7.  | 52.219-2     | EQUAL LOW BIDS  |
| 8.  | 52.219-19    | SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM  |
| 9.  | 52.222-22    | PREVIOUS CONTRACTS AND COMPLIANCE REPORTS   |
| 10. | 52.222-38    | COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS   |
| 11. | 52.223-13    | CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING   |
| 12. |              | AFFILIATED BIDDERS  |
| 13. |              | PLANT AVAILABLE   |
| 14. |              | REMIT TO ADDRESS  |

SECTION 00600  
REPRESENTATIONS & CERTIFICATIONS

1. 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contradictory to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above \_\_\_\_\_ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

2. 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO  
INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any

Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of Provision)

### 3. 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

#### (a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

#### (d) Taxpayer Identification Number (TIN).

\_\_\_ TIN:-----

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

- ☐ Offeror is an agency or instrumentality of a foreign government;  
☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- ☐ Sole proprietorship;  
☐ Partnership;  
☐ Corporate entity (not tax-exempt);  
☐ Corporate entity (tax-exempt);  
☐ Government entity (Federal, State, or local);  
☐ Foreign government;  
☐ International organization per 26 CFR 1.6049-4;  
☐ Other-----

(f) Common parent.

- ☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name-----

TIN-----

(End of provision)

4. 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED  
DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are / / are not / / presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have / / have not / / , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are / / are not / / presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has / / has not / / , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

5. 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A  
TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include –

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.  
(End of provision)

#### 6. 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAR 2001)

(a)

(1) The North American Industry Classification System (NAICS) code for this acquisition is 237990.

(2) The small business size standard is \$17.02 million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

(1) The offeror represents as part of its offer that it / / is, / / is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it / / is, / / is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it / / is, / / is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it / / is, / / is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it / / is, / / is not a service-disabled veteran-owned small business concern.

(c) Definitions. As used in this provision --

Service-disabled veteran-owned small business concern --

(1) Means a small business concern --

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

"Small business concern," means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Veteran-owned small business concern means a small business concern --

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern," means a small business concern --

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C.645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(6) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this

provision.] The offeror represents, as part of its offer, that --

(i) It / / is, / / is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It / / is, / / is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

\_\_\_\_\_ Black American.

\_\_\_\_\_ Hispanic American.

\_\_\_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

\_\_\_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_\_ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

\_\_\_\_\_ Individual/concern, other than one of the preceding.  
(End of provision)

#### 7. 52.219-2 EQUAL LOW BIDS. (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.



8. 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.] The Offeror / / is, / / is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees    Avg. Annual Gross Revenues

<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(End of provision)

9. 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

(a) / / It has, / / has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) / / It has, / / has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

10. 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS  
(DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

11. 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING  
(OCT 1996)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

☐ (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or

☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

12. AFFILIATED BIDDERS

(a) Business concerns are affiliates of each other when, either directly or indirectly--

(1) One concern controls or has the power to control the other; or

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

13. PLANT AVAILABLE

## PLANT AND EQUIPMENT SCHEDULE

Eng Form 1619-R

\*

[illegible]

\*

No.	Type	Capacity	Manufacturer	Age & Condition	Location

NOTE: \*Provide separate table for each type of equipment such as excavation, pile driving, concrete plant, material handling, etc. Use separate line for each major item. Use additional pages if necessary.

1. Dredging Contracts. In preparing the above tabulation, the bidder shall insert the following information under the appropriate heading, using a separate line item for each major item and an additional page if necessary.

a. Number. For dredges, give identifying number and name.

b. Type. Under this heading, give description as follows: For bucket and dipper dredges, show bucket capacity in cubic yards, horse-power of hoist engine, type of power, and number of swings per hour; for pipe line dredges, show inside diameter of discharge pipe, horse-power of pump engine and type of power.

c. Capacity. Under this heading, state the estimated capacity of the plant in cubic yards per month when working materials similar to those which it is anticipated will be encountered in the performance of work.

#### 14. REMIT TO ADDRESS

The bidder/offeror shall insert below the address to which all contract payments shall be mailed.

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The Contractor shall notify the Contracting Officer, in writing, of any change to this address. A contract modification will be required.

In accordance with the "Prompt Payment" clause of this contract, any invoice which specifies a payment address differing from that shown above, will be returned without action.

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SECTION 00700  
CONTRACT CLAUSES

1        252.201-7000    CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

2        52.203-3        GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

3        52.203-5        COVENANT AGAINST CONTINGENT FEES (Apr 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

#### 4 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

##### (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

5      52.203-8      CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any

other rights and remedies provided by law, regulation, or under this contract.  
(End of clause)

6 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.  
(End of clause)

7 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## (c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

## (e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

## 8 252.203-7001 SPECIAL PROHIBITION ON EMPLOYMENT

(a) Definitions. As used in this clause --

(1) "Arising out of a contract with the DoD" means any act in connection with --

(i) Attempting to obtain;



(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving --

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C.2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly --

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C.2408, the Government may consider other available remedies, such as --

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify --

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C.2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of Clause)

9 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUGUST 2000)

(a) Definitions. As used in this clause --

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as --

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications. Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as --

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper,

and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of Clause)

10      252.204-7003    CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(End of Clause)

11      52.209-6      PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH  
CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT  
(JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of Clause)

12      52.214-26      AUDIT AND RECORDS -- SEALED BIDDING (OCT 1997)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the

Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

(End of Clause)

13      52.214-27      PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--  
MODIFICATIONS--SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications- for which this clause becomes operative under paragraph (a) of this clause

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which

(1) the actual subcontract or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if --

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid --

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C.6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of Clause)

14      52.214-28      SUBCONTRACTOR COST OR PRICING DATA -- MODIFICATIONS --  
SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall --

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 5.403-4(a)(1); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1).

(End of Clause)

15      52.214-29      ORDER OF PRECEDENCE -- SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);

(b) Representations and other instructions;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments; and

(e) The specifications.

(End of Clause)

## 16 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract -- HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. Service-disabled veteran-owned small business concern --

(1) Means a small business concern --

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. Small disadvantaged business concern means a small business concern that represents, as part of its offer that --

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern --

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern --

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of Clause)

17 52.219-9 Alt I SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause --

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:



(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of --

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--

(i) Small business concerns;

- (ii) Veteran-owned small business concerns;
- (iii) HUBZone small business concerns;
- (iv) Small disadvantaged business concerns; and
- (v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will --

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether HUBZone small business concerns were solicited and, if not, why not;
- (D) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (E) Whether women-owned small business concerns were solicited and, if not, why not; and
- (F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

- (A) Trade associations;
- (B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through --

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with --

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of Clause)

# 18 52.219-16 LIQUIDATED DAMAGES -- SUBCONTRACTING PLAN (JAN 1999)

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial

plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.  
(End of Clause)

19      52.222-1      NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of Clause)

20      52.222-3      CONVICT LABOR (AUG. 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if --

(a) (1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of Clause)

21      52.222-4      CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME  
COMPENSATION (SEPT 2000)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records. (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

22      52.222-6      DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment

computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of Clause)

23      52.222-7      WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

24      52.222-8      PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under



the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## 25 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different

practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## 26 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

## 27 52.222-11 SUBCONTRACTS (LABOR STANDARDS (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver

to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

28      52.222-12      CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

29      52.222-13      COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

30      52.222-14      DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

31      52.222-15      CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

32      52.222-21      PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

33 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in

part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

34      52.222-27      AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR  
CONSTRUCTION (FEB 1999)

(a)      Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);  
and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations

under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and

discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number,



construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

35      52.222-35      AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS  
OF THE VIETNAM ERA (APR 1998)

(a) Definitions. As used in this clause--

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands. Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

36      52.222-36      AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES  
(JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

37      52.222-37      EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS  
OF THE VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

38      52.223-6      DRUG-FREE WORKPLACE (JAN 1997)

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to deter- mine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture,

distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

### 39 52.223-14 TOXIC CHEMICAL RELEASE REPORTING

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

#### 40 52.225-9 BUY AMERICAN ACT-CONSTRUCTION MATERIALS (MAY 2002)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means-

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

*(b) Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

None

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

*(c) Request for determination of inapplicability of the Buy American Act.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).



(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison				
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>	
<i>Item 1:</i>				
Foreign construction material	_____	_____	_____	
Domestic construction material	_____	_____	_____	
<i>Item 2:</i>	_____	_____	_____	
Foreign construction material	_____	_____	_____	
Domestic construction material				
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]				

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.  
(End of clause)

42      52.227-1      AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

43      52.227-4      PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

44      52.228-2      ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

45      52.228-12      PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

46      52.229-3      FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the

exemption.

(End of clause)

47 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

48 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in

accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including

coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.  
(End of clause)

49      52.232-17      INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by

contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

50      52.232-23      ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

51      52.232-27      PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice Payments.

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been

accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.



(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of the contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The

interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except--

(1) For additional penalties due on or before January 22, 1992, such penalties shall not exceed \$2,500;

(2) After January 22, 1992, the additional penalty shall not exceed \$5,000;

(3) The additional penalty shall never be less than \$25; and

(4) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are

consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments.

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports.

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the subcontractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

52 52.233-1 DISPUTES (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested

accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect

to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

### 53 52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

54      52.236-2      DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

55      52.236-3      SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can



affect the work or its cost, including but not limited to

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

56      52.236-5      MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

57      52.236-6      SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is

satisfactory to the Contracting Officer and has authority to act for the Contractor.

58      52.236-7      PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

59      52.236-8      OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

60      52.236-9      PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

61      52.236-10      OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written

consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

62      52.236-11      USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

63      52.236-12      CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the

work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

64      52.236-13      ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will

(1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) avoid interruptions of Government operations and delays in project completion dates; and

(3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary

for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

65      52.236-15      SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

66      52.236-21      SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the

drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

67      252.236-7000      MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

- (i) Material;
- (ii) Labor;
- (iii) Equipment;
- (iv) Subcontracts; and
- (v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.  
(End of clause)

68      52.242-13      BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

69      52.242-14      SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

70      52.243-4      CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract,

including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

## 71 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

(End of clause)

## 72 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all

reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)



(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(h) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract . . . . ., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)  
(End of clause)

74      52.249-2 Alt I    TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)  
(SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any

payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

75 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the

specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (i) acts of God or of the public enemy,
- (ii) acts of the Government in either its sovereign or contractual capacity,
- (iii) acts of another Contractor in the performance of a contract with the Government,
- (iv) fires,
- (v) floods,
- (vi) epidemics,
- (vii) quarantine restrictions,
- (viii) strikes,
- (ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

76 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

77 AUTHORIZED DEVIATIONS IN CLAUSES

The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

78 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

79 DEFINITIONS (JUL 1989) (DEVIATION) EFARS 52.202-10001  
(This clause is applicable if the contract number begins with DACW)

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Corps of Engineers Board of Contract Appeals,

Office of the Chief of Engineers, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314-1000.

80 ENVIRONMENTAL LITIGATION (1974 NOV OCE)

(a) If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a Subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a Subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

(b) The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

(End of Clause)  
(EFARS 52.2/9109(i))

81 FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE)

(a) As soon as practicable after the completion of the entire work or any section thereof (if the work is divided into sections) as in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. Should any shoals, lumps, or other lack of contract depth be disclosed by this examination the Contractor will be required to remove same by dragging the bottom or by dredging at the contract rate for dredging, but if the bottom is soft and the shoal areas are small and form no material obstruction to navigation, the removal of such shoal may be waived by the discretion of the Contracting Officer. The Contractor or his authorized representative will be notified when soundings and/or sweepings are to be made, and will be permitted to accompany the survey party. When the area is found to be in a satisfactory condition, it will be accepted finally. Should more than two sounding or sweeping operations by the Government over an area be necessary be reason of work for the removal of shoals disclosed at a prior sounding or sweeping, the cost of such third and any subsequent sounding or sweeping operations will be charged against the Contractor at the rate of \$1,500.00 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is enroute to or from the site or held at or near the said site for such operations.

(b) Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

(End of Clause)  
(EFARS 52.2/9110(e))

82 INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Solicitation.



83      52.203-11      CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE  
CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989-

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

84.      52.244-2      SUBCONTRACTS

(a) *Definitions.* As used in this clause-

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds-

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

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(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting-

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations

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(End of clause)

SECTION 00800  
SPECIAL CONTRACT REQUIREMENTS

- 1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK
- 2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)
- 3 52.236-4 PHYSICAL DATA (APR 1984)
- 4 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS
- 5 52.219-14 LIMITATIONS ON SUBCONTRACTINGS (DEC 1996)
- 6 52.236-16 QUANTITY SURVEYS (APR 1984)
- 7 QUANTITY SURVEY SCHEDULING
- 8 252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)
- 9 252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)
- 10 ACCOMMODATIONS FOR INSPECTORS
- 11 CERF IMPLEMENTATION (1983 JUN OCE)
- 12 CONTINUITY OF WORK (1965 APR OCE)
- 13 CONTRACTOR SUBMITTAL PROCEDURES ER 415-1-10
- 14 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
- 15 LAYOUT OF WORK (1965 APR OCE)
- 16 MARKING AND LIGHTING OF EQUIPMENT
- 17 REAL ESTATE
- 18 REPORT OF DREDGING OPERATIONS
- 19 SAFETY REQUIREMENTS

- 20 SHOALING (1965 APR OCE)
- 21 SIGNAL LIGHTS
- 22 VARIATIONS IN ESTIMATED QUANTITIES--DREDGING (1985 JAN HQ USACE)
- 23 VESSEL EMBARKING/DISEMBARKING SAFETY
- 24 WITHDRAWAL OF CONTRACTOR'S PLANT FROM CONTRACT WORK

1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

(b) Weather Conditions. N/A.

(c) Transportation Facilities. The location is served by railroads and major highways. The Contractor shall investigate and obtain the necessary information and data regarding the availability and use of access roads and highways to the site of the work. The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary permits to operate on or cross public highways and roads and railroads in connection with the prosecution of the contract work. See the Contract Clause (Section 00700) entitled "Permits and Responsibilities".

(d) Project Condition Soundings. Government sounding drawings from the previous years are included as reference drawings and are listed in the paragraph entitled "Contract Drawings, Maps and Specifications" of this section.

(e) Lake Levels. Data and forecasts are available through the publication, "Monthly Bulletin of Lake Levels" by the Department of the Army, Detroit District, Corps of Engineers, ATTN: CELRE-EP-HW, P.O. Box 1027, Detroit, MI 48231-1027.

(f) Harbor, River and Channel Traffic. There is a heavy amount of traffic in Maumee Bay and River, consisting of fishing boats, commercial vessels, and recreational craft. The Contractor, in planning the schedule of operations, must not impede the traffic of incoming or outgoing vessels..

(g) Channel Crossing Items. There are pipe, cable, and other type utility crossings within the work limits. These crossings are particularly numerous in the area of bridge crossings. The Contractor shall confer with the owners of the crossings regarding their exact locations and exact elevations and will be held responsible for any damages done to them by the dredging operations.

(h) Local Conditions. The work areas inside the harbor are considered sheltered although they may be subject to wave action from the north and east. Work areas in the lake approach channel are subject to lake storms from all quarters. The site of the disposal area is subject to some wave action from lake storms. Up-to-date Federal and City regulations governing the use, navigation and administration of the Cuyahoga River is published in the latest issue of the "United States Coast Pilot 6", by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

(i) Condition of Channels. The channels at Maumee Bay are dredged totally, or in part, annually, depending upon sediment build-up over the year. Project condition sounding drawings showing the depths prior to maintenance dredging in previous years are available for inspection in the Survey Branch, Department of the Army, US Army Engineer District, Buffalo, Building No. 2, 1776 Niagara Street, Buffalo, NY 14207-3199, (716) 879-4285, and may be inspected by the bidders between the hours of 8:00 AM and 4:00 PM, Monday through Friday. Previous year drawings are to be considered for information only, and should not be considered representative of current conditions.

(j) Airport Traffic: N/A.

(k) Acceptance Section Lengths. Refer to Section 02481 "MAINTENANCE DREDGING".

(l) Datum and Benchmarks. The plane of reference of low water datum as used in these specifications is that determined by the following bench marks:

(1) P 182 (1954), In Toledo, at the intersection of the Conrail Railroad and Main Street, set vertically in the northeast face of the southwest concrete abutment of the railroad overpass of the street, 29.5 feet southwest of the centerline of the eastbound lanes of the street, 17.7 feet northwest of the center of the track, 2.0 feet above the ground surface, and 1.6 feet south-southwest of the northwest end of the abutment. Elevation: 585.699 ft.

(2) M 182 (1954), In Toledo, at the intersection of Summit Street and Interstate Highway 280, in top of and 1.0 feet north of the south corner of the most northeasterly of 2 concrete piers of the Summit Street off ramp, 126.3 feet northeast of the center of the northbound highway overpass of the street and the Conrail Railroad, 81.0 feet south of the Bench Mark Craig, 77.8 feet southeast of the centerline of the eastbound lanes of the street, 28.2 feet northwest of the near rail, 4.9 feet below the level of the street, and 2.0 feet above the ground surface. Elevation: 585.689 ft.

(3) LAKE SHORE EAST (UNK), In Toledo, at the intersection of the Conrail Railroad and Miami Street, in the top of and 2.3 feet east of the west end of the south stone retaining wall of a railroad bridge spanning the Maumee River, 177.2 feet west of the center of the street, 9.2 feet south of the near rail, 5.9 feet east of the Bench Mark S 18, and 1.0 feet below the level of the track. Elevation: 591.493 ft.

(4) N 182 (1954), In Toledo, at the intersection of Miami and Stratton Streets, set vertically in the east face of the most northerly of 2 concrete columns of the first pier west of Miami Street of the Anthony Wayne Bridge spanning the Maumee River, 134.8 feet north of the extended center of Stratton Street, 15.4 feet west of the centerline of Miami Street, 4.9 feet south of the northeast corner of the column, and 2.3 feet above the ground surface. Elevation: 609.380 ft.

(5) Q 182 (1954), In Toledo, set vertically in the northwest face of the two Maritime Plaza Buildings at 710 Water Street, 72.5 feet southwest of the center of the street, 28.5 feet northwest of the northeast face of the main entrance to the buildings, 3.6 feet above the ground surface, and 1.0 feet southwest of the north corner of the buildings. Elevation: 582.999 ft.

(6) 1206 (UNK), In Toledo, at the intersection of Summit and Ohio Streets, in the top of and 0.7 feet northeast of the southwest end of the bottom step of the entrance to the Ohio Blenders Company Office, 62.3 feet northeast of the center of Ohio Street, 41.0 feet southeast of the centerline of the eastbound lanes of Summit Street, 5.9 feet west of the center of the entrance doors to the building, 3.6 feet northwest of the northwest face of the building, and 0.7 feet above the level of the sidewalk. Elevation: 594.445 ft.

(7) SUDER (UNK), In Toledo, in top of and 6.2 feet southwest of the northeast end of the concrete retaining wall of the basement steps of the Koil Komfort Mattress Company at 3444 Summit Street, 55.4 feet southwest of the extended centerline of Suder Avenue, 39.4 feet northeast of the center of the entrance to the building, 37.7 feet southeast of the centerline of the eastbound lanes of the street, 4.6 feet northwest of the northwest face of the building, and 1.0 feet above the level of the street. Elevation: 588.793 ft.

The plane of low water datum is 569.2 feet above mean level at Rimouski, Quebec (IGLD-1985) (International Great Lakes Datum 1985).

(m) Area Office Point of Contact. Submittals shall be transmitted to the following:

Mr. Arnold Page  
Department of the Army  
U.S. Army Engineer District, Buffalo  
Toledo Area Office  
Bayview Park  
3900 Summit Street  
PO Box 5002  
Toledo, OH 43611  
(419) 726-9014 – Tel.  
(419) 259-7436 – Fax

(n) Notifications. The Contractor shall notify the Shore Maintenance Detachment, Ninth Coast Guard district, 1240 E. Ninth Street, Cleveland, OH 44199-2060, phone (216) 522-7601, at least two (2) weeks prior to



commencement of dredging, concerning the presence of Coast Guard-owned cables and the necessary action and coordination to prevent cable damage.

(o) Order of Work. N/A.

(p) Capacity of Disposal Area. The Government-designated Open-Lake Disposal area has sufficient capacity to accept the estimated quantity of dredged material in this contract.

(q) Confined Disposal Facility (CDF) Information. N/A.

(r) Open-Lake Disposal. The following guidelines shall be adhered to when disposing of the dredged material in the Government-designated Open-Lake Disposal area:

(1) Procedure. Dredging shall be conducted in such a manner which will prevent spillage or discharge of any dredged material between the dredging location and the disposal area. No boulders, broken concrete, or other similar-type debris shall be disposed of in the Open-Lake Disposal area. For disposal of this type of material, see paragraph "Other Removed Materials" of Section 02481, "MAINTENANCE DREDGING".

(2) Limits on Open-Lake Disposal. Discharge of 200,000 cubic yards of dredged material into the Open-Lake Disposal area has been authorized under Section 404 of the Clean Water Act (33 USC 1344).

(s) Nearshore Disposal Area Information. N/A.

(t) Contractor-furnished Disposal Area Agency Coordination. The Contractor shall coordinate on the use of the proposed Contractor-furnished Disposal area(s) with the following agencies, and shall submit with his bid, written approval from these agencies, for the use of the Disposal area(s):

Regional Administrator  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604  
(312) 353-3576

District Commander  
Attention: CELRB-TD-RO  
U.S. Army Engineer District  
1776 Niagara Street  
Buffalo, NY 14207-3199  
(716) 879-4329

Director  
Ohio Environmental Protection Agency  
P.O. Box 1049  
1800 Watermark Drive  
Columbus, OH 43216-1049  
(614) 644-2135

Director  
Ohio Department of Natural Resources  
Fountain Square  
Columbus, OH 43224  
(614) 265-6415

State Historic Preservation Officer  
Ohio Historic Preservation Office  
1982 Velma Avenue  
Columbus, OH 43211-2497  
(614) 297-2470

Field Supervisor  
Columbus Field Office  
U.S. Fish & Wildlife  
Division of Ecological Services  
3950-H Americana Parkway  
Reynoldsburg, OH 43068  
(614) 469-6923

(u) Restrictions. N/A

(v) Environmental Notification. The Contractor shall notify the Ohio Environmental Protection Agency, both the Section 401 Coordinator (P.O.Box 1049, 1800 Watermark Drive, Columbus, OH 43266-0149, Phone: (614) 644-3020), and the Northwest District Office (1035 Devleckgrove Drive, Bowling Green, OH 43402, Phone: (419) 352-8461), at least three (3) days prior to commencement of dredging, concerning the initiation of dredging operations.

(End of Clause)

#### 4 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS

(a) The CD-Rom disc furnished by the Government for solicitation of bids includes an electronic copy of the contract drawings, maps and specifications without charge except applicable publications incorporated into the specifications by reference. Large scale paper or mylar copies of the plans and paper copies of the specifications may be produced at the Contractor's expense from the CD-Rom. The work shall conform to the following contract drawings and maps, all of which form a part of the contractual documents.

Title	File	Drawing No.
CONTRACT DRAWINGS:		
Toledo Harbor, Toledo, OH Maumee Bay Maintenance Dredging – FY2003 General Plan	1/1	03-TOL-1/1

#### REFERENCE DRAWINGS:

02S-TOL-1/7	Project Condition Soundings, March – April, 2002
02S-TOL-1/8	Project Condition Soundings, April – June, 2002
02S-TOL-1/9	Project Condition Soundings, June, 2002
02S-TOL-2/7	“Before” Dredging Soundings, May, 2002
02S-TOL-3/7	“After” Dredging Soundings, June, 2002

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

© The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of Clause)

5      52.219-14      LIMITATIONS ON SUBCONTRACTINGS (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

6      52.236-16      QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

7      QUANTITY SURVEY SCHEDULING

The Government will perform the "before" contract dredging survey(s) to determine the work required, during the fourteen (14) calendar day period prior to the start of dredging operations. The Contractor shall notify the Contracting Officer, in writing, within ten (10) calendar days after award of the contract, the date on which he proposes to begin the contract dredging. Any changes to the proposed start date must be made before the start of the fourteen (14) day period. If the Contractor subsequently delays the start of dredging beyond the original proposed date such that the Contracting Officer determines that the Government's "before" dredging survey(s) no longer accurately indicate the material available, a new "before" dredging survey shall be performed; the cost of which will be borne by the Contractor at the rate of \$1,760.00 per day. The Government shall schedule the new survey as soon as possible, taking into consideration the Government resources and other commitments for similar work. No time

extensions shall be granted or costs or damages allowed to the Contractor for any delays resulting from the taking of a second or subsequent "before" dredging survey(s).

(End of Clause)

8 252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the Contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq.).

(End of clause)

9 252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) Sixty (60%) percent of the lump sum price upon completion of the Contractor's mobilization at the work site.

(2) The remaining forty (40%) percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

10

#### ACCOMMODATIONS FOR INSPECTORS

The Contractor shall furnish to inspectors on board the dredge or other craft upon which they are employed a suitable separate desk for office purposes. The desk shall be in a room fully equipped and maintained to the satisfaction of the Contracting Officer. The room shall be properly heated, ventilated, and lighted. The desk shall be furnished with a lock and chair. Washing and toilet facilities shall be made available for the inspectors. The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price. If the Contractor fails to meet these requirements, the facilities referred to above will be secured by the Contracting Officer, and the cost thereof will be deducted from payments to the Contractor.

(End of Clause)

11

#### CERF IMPLEMENTATION (1983 JUN OCE)

If the work specified in this contract is performed by a hopper dredge(s), the owner must have an active Basic Ordering Agreement (BOA) for the hopper dredge(s) on file with the Corps. The Contractor shall be obligated to make the hopper dredge(s) available to serve in the Corps of Engineers Reserve Fleet (CERF) at any time that the hopper dredge(s) is performing work under this contract. When the Contracting Officer is notified of the decision to activate this dredge(s) into the CERF, he shall take appropriate action to release the dredge(s). He may then extend or terminate the contract to implement whichever action is in the best interest of the Government. The CERF Contractor shall also be subject to the following conditions:

(a) The Director of Civil Works may require the Contractor to perform emergency dredging at another CONUS (48 contiguous states) site for a period of time equal to the remaining time under this contract at the date of notification plus up to ninety (90) days at the previously negotiated rate which appears on the schedule of prices in the BOA.

(b) The Chief of Engineers may require the Contractor to perform emergency dredging at an OCONUS (Outside CONUS which includes Alaska, Hawaii, Puerto Rico, the Virgin Islands, or U.S. Trust Territories) site for a period of time equal to the time remaining under this contract at the date of notification plus up to one hundred eighty (180) days at the negotiated rate which appears on the schedule of prices in the BOA.

(c) The CERF shall be activated by the Chief of Engineers or the Director of Civil Works; then the Ordering Contracting Officer will notify the Contractor. From the time of notification, the selected hopper dredge(s) must depart for the emergency assignment within seventy-two (72) hours for CONUS or ten (10) days for OCONUS assignments.

(d) A confirming delivery order will be issued pursuant to the Basic Ordering Agreement (BOA) by the Ordering Contracting Officer. Such delivery order shall utilize the schedule of rates in the BOA for the specific hopper dredge(s).

(e) If during the time period specified in a, b, or c, above, a CERF vessel(s) is still required, the contract performance may be continued for additional time by mutual agreement.

(End of Clause)

(EFARS 52.2/9112)

## 12 CONTINUITY OF WORK (1965 APR OCE)

No payment will be made for work done in any area designated by the Contracting Officer until the full depth required under the contract is secured in the whole of such area, unless prevented by ledge rock, nor will payment be made for excavation in any area not adjacent to and in prolongation of areas where full depth has been secured except by decision of the Contracting Officer. Should any such nonadjacent area be excavated to full depth during the operations carried on under the contract, payment for all work therein may be deferred until the required depth has been made in the area intervening. The Contractor may be required to suspend dredging at any time when for any reason the gages or ranges cannot be seen or properly followed.

(End of Clause)

(EFARS 52.2/9110(c))

## 13 CONTRACTOR SUBMITTAL PROCEDURES ER 415-1-10

Within ten (10) days after receipt of notice to proceed, the Contractor shall complete and submit to the Contracting Officer, in duplicate, submittal register ENG Form 4288 listing all submittals and dates. In addition to those items listed on ENG Form 4288, the Contractor will furnish submittals for any deviation from the plans and specifications. The scheduled need dates must be recorded on the document for each item for control purposes. In preparing the document, adequate time (minimum of 30 days) will be allowed for review and approval and possible resubmittal. Scheduling shall be coordinated with the approved progress schedule. The Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. Copies of updated or corrected listing shall be submitted to the Contracting Officer at least every 60 days in the quantity specified. Payment will not be made for any material or equipment which does not comply with contract requirements.

(a) A copy of ENG Form 4288 entitled "SUBMITTAL REGISTER" is listed as an attachment in Section 00100. The form has been completed to show those technical items the Contractor shall submit to the Contracting Officer, as indicated in the contract requirements. The Contractor may reproduce this form for its use. The furnished listing shall not relieve the Contractor of its obligation to comply with the specifications for items not on the listing.

(b) TRANSMITTAL OF SUBMITTALS. All items which are to be submitted to the Contracting Officer for approval shall be transmitted with ENG Form 4025, entitled "Transmittal of Shop Drawings, Equipment Data, Material Sample, or Manufacturer's Certificates of Compliance", and is listed as an attachment in Section 00100.

(End of Clause)

## 14 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

(a) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region II. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in

effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.

(b) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36 substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees are allowable. Costs for major repairs and overhaul are unallowable.

(c) When actual equipment costs are proposed and the total amount of the pricing action is over \$25,000, cost or pricing data shall be submitted on Standard Form 1411, "Contract Pricing Proposal Cover Sheet." By submitting cost or pricing data, the contractor grants to the contracting officer or an authorizing representative the right to examine those books, records, documents and other supporting data that will permit evaluation of the proposed equipment costs. After price agreement the Contractor shall certify that the equipment costs or pricing data submitted are accurate, complete and current.

(End of Clause)  
(EFARS 31.105(d)(2)(i)(A))

## 15 LAYOUT OF WORK (1965 APR OCE)

(a) The Government has established bench marks and horizontal control points at the site of the work. These are described and indicated on contract drawings.

(b) From these control points the Contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the contract drawings. The Contractor shall establish and maintain at the site of the work the following horizontal and vertical controls:

See Section 02481, "Maintenance Dredging"

The above are minimum requirements and the Contractor shall place and establish such additional stakes and markers as may be necessary for control and guidance of his construction operations. All survey data shall be recorded in accordance with standard and approved methods. All field notes, sketches, recordings and computations made by the Contractor in establishing above horizontal and vertical control points shall be available at all times during the progress of the work for ready examination by the contracting officer or his duly authorized representative.

(c) The Contractor shall furnish, at his own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work from the control points established by the Government. It shall be the responsibility of the contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If any of the control points established at the site by the Government are destroyed by or through the negligence of the Contractor prior to their authorized removal, they may be replaced by the Contracting Officer, and the expense of replacement will be deducted from any amount due or which may become due the Contractor. The Contracting Officer may require that work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper replacement of the control points.

(End of Clause)  
(EFARS 52.2/9108(a)(b))

16

## MARKING AND LIGHTING OF EQUIPMENT

(a) When not in use, all booms and similar unusually high equipment shall be lowered to below the equipment's fixed highest point. Tips of booms shall also be marked by a red light continuously lit day and night.

(b) Top 15 feet of booms shall be painted with fluorescent orange Federal Standard 595A, color 38903 or equal.

(c) All Contractor work vehicles shall be identified by company name.  
(End of Clause)

17

## REAL ESTATE

No real estate rights have been obtained by the Government for this project. If any real estate rights are desired by the Contractor in addition to that already available to the Government for access to the disposal facility and/or project area, they shall be obtained by the Contractor at his own expense. Copies of any such agreements shall be furnished to the Contracting Officer for approval before entering thereon. Such agreements shall clearly relieve the Government of any responsibility for damages resulting from the use of such grounds.

(End of Clause)

18

## REPORT OF DREDGING OPERATIONS

As set forth in Section 00700, "Contract Clauses", paragraph entitled "Inspection of Construction," which requires the maintenance of inspection records, either ENG Form 4267 (Report of Operations - Pipeline, Dipper or Bucket Dredges) or ENG Form 27 (Daily Report of Operations - Hopper Dredges), as appropriate to the type of work being performed, shall be completed daily. The Contractor shall furnish the completed forms, to the Contracting Officer. Blank copies of both forms are located at the end of this Solicitation. An adequate supply will be provided to the Contractor by the Contracting Officer. If the Contractor proposes to use any other form, it shall be approved by the Contracting Officer prior to use.

(End of Clause)

19

## SAFETY REQUIREMENTS

(a) General. Contract Clause entitled "Accident Prevention" of this contract requires compliance with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1 dated 3 September 1996 entitled "Safety and Health Requirements Manual." Engineer Manual EM 385-1-1 is included as an attachment to this solicitation. The Contractor will be required to comply with OSHA standards and acquaint himself with any changes to those standards and the Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1).

(b) Accident Prevention Plan. The Contractor's Accident Prevention Plan format shall be in accordance with Table 1-1 of the "Safety and Health Requirements Manual", EM 385-1-1, 3 September 1996. A sample Accident Prevention Plan template is included as an attachment to this solicitation. Additionally, the Contractor shall complete the Accident Prevention Plan Checklist included as an attachment to this solicitation.

(c) Activity Hazard Analysis. The "Accident Prevention Plan" required by EM 385-1-1 shall include, as a separate attachment, a detailed Activity Hazard Analysis of each phase of work. This analysis shall list all anticipated hazards and specific actions to be taken by the Contractor to prevent injury to personnel or property damage from such hazards. For projects involving major phases of work in successive stages, separate analysis shall be submitted for each such phase immediately prior to commencement of that phase. The analysis for the first phase or in the case of smaller projects, the analysis for the entire project shall be submitted with the "Accident Prevention



Plan” required by Contract Clauses prior to the preconstruction conference. The Contractor’s submittals will be reviewed for acceptance by designated Government personnel prior to the start of any work under this contract.  
(End of Clause)

20 SHOALING (1965 APR OCE)

If, before the contract is completed, shoaling occurs in any section previously accepted, including shoaling in the finished channel, because of the natural lowering of the side slopes, redredging at contract price, within the limit of available funds, may be done if agreeable to both the Contractor and the Contracting Officer.

(End of Clause)  
(EFARS 52.2/9110(f))

21 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Commandant, U.S. Coast Guard (33 C.F.R. 80.18-80.31a and 33 C.F.R. 95.51-95-70).

(End of Clause)

22 VARIATIONS IN ESTIMATED QUANTITIES--DREDGING (1985 JAN HQ USACE)

(a) Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of material within the required dredging prism varies more than fifteen percent (15%) above or below the stated estimated quantity within the required dredging prism, an equitable adjustment in the contract unit price will be made upon demand of either party. The equitable adjustment will be based upon any increase or decrease in costs due solely to the variations above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity within the required dredging prism. Any equitable adjustment in the contract unit price will also apply to that part of the actual quantity of allowable overdepth material above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity.

(End of Clause)  
(EFARS 52.2/9110(i))

23 VESSEL EMBARKING/DISEMBARKING SAFETY

When a hopper dredge is used in the performance of the work, embarking and/or disembarking of the dredge vessel shall be made only after the dredge vessel has safely "checked-down" and the launch craft is safely alongside, and at the same speed and direction as the dredge vessel. Embarking and/or disembarking shall only take place under the direction of the launch craft operator.

(End of Clause)

## WITHDRAWAL OF CONTRACTOR'S PLANT FROM CONTRACT WORK

(a) At least ten (10) days before commencing work under this contract, the Contractor shall submit to the Contracting Officer in writing, a list indicating the location of all dredging work not covered by this contract, if any, he desires to perform during the first calendar month of this contract with the dredging plant assigned to this contract. The request submitted to the Contracting Officer for approval of work not covered by this contract shall indicate the estimated number of work days, including probable delays that the Contractor desires to withdraw from contract operations for work not covered by this contract. The proposed work not covered by this contract shall be located only adjacent to the work under this contract.

(b) The Contractor shall periodically submit similar requests as may be necessary throughout the duration of the contract, each letter to cover a period no greater than one calendar month. Each letter shall be submitted at least ten (10) days in advance of the period covered by the letter.

(c) The Contracting Officer, after ascertaining the overall needs of navigation and the needs of those seeking dredging not covered by this contract from such sources as may be available, and after determining that the Contractor has maintained a satisfactory rate of progress, shall determine the maximum number of work days that the Contractor may withdraw his plant for dredging not covered by this contract during the period covered by such request.

(d) The date and duration of each individual withdrawal and the number of days and total time during which the plant may be withdrawn from the contract under each such approval, shall be controlled by the Contracting Officer or his designated agent in a manner which, in his opinion, best serves the interests of navigation.

(e) The Contractor shall be assessed liquidated damages for each day plant assigned to this contract is withdrawn to perform dredging not covered by this contract without the approval of the Contracting Officer.

(End of Clause)

(End of Section 00800)

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SECTION 01330

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## SECTION 01330

## SUBMITTAL PROCEDURES

## PART 1 GENERAL

## 1.1 PAYMENT

No separate payment will be made for any requirements under this Section and all costs of implementation shall be included in the payment item(s) shown in Section 00010, "SOLICITATION, OFFER AND AWARD (SF 1442) AND BIDDING SCHEDULE."

## 1.2 SUBMITTAL IDENTIFICATION

Submittals required are identified by SD numbers and titles as follows:

SD-01, Preconstruction Submittals

SD-11, Closeout Submittals

## 1.3 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

## 1.3.1 Government Approved

Government approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause (Section 00700) entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings."

## 1.3.1.1 Designated Reviewers

The organization designated to perform the review for approval for items requiring Government approval (G) is identified by acronym in the (f) (CLASSIFICATION/GOVT OR A/E REVWR) column on the SUBMITTAL REGISTER. Following is a list of the acronyms used and their full description:

AOF = The Resident U.S. Army Corps of Engineers Area Office

TSD = Technical Services Division, Design Branch, Buffalo District,  
U.S. Army Corps of Engineers

## 1.3.2 Information Only

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.

#### 1.4 APPROVED SUBMITTALS

The Contracting Officer's approval of submittals shall not be construed as a complete check, but will indicate only that the general method of construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for the satisfactory construction of all work. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

#### 1.5 DISAPPROVED SUBMITTALS

When a submittal is returned to the Contractor and marked "DISAPPROVED" or "APPROVED - SUBJECT TO CONDITIONS INDICATED," the Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, a notice in accordance with the Contract Clause (Section 00700) "Changes" shall be given promptly to the Contracting Officer.

#### 1.6 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

### PART 2 PRODUCTS (Not Applicable)

### PART 3 EXECUTION

#### 3.1 GENERAL

The Contractor shall submit all items listed on the Submittal Register and specified in other sections of these specifications. The Contracting Officer may request submittals in addition to those listed when deemed necessary to adequately describe the work covered in the respective sections. Units of weights and measures used on all submittals shall be the same as those used in the contract drawings. Submittals shall be made in the respective number of copies and to the respective address set forth below. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) System Manager and each item shall be stamped, signed, and dated by the CQC System Manager indicating action taken. Proposed deviations from the contract requirements shall be clearly identified. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby.

### 3.2 SUBMITTAL REGISTER

See list of attachments in Section 00100, "INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS" for Submittal Register, listing items of equipment and materials for which submittals are required by the specifications; this list may not be all inclusive and additional submittals may be required. The Contractor will also be given the Submittal Register on a diskette that also contains instructions on the use of the diskette. Columns "c" through "f" have been completed by the Government; the Contractor shall complete columns "a" and "b" and "g" through "l" and submit the forms (two (2) hard copies plus associated electronic file) to the Contracting Officer for approval within 10 calendar days after Notice to Proceed. The Contractor shall keep this diskette up-to-date and shall submit it to the Government together with the monthly payment request. The approved Submittal Register will become the scheduling document and will be used to control submittals throughout the life of the contract. The Submittal Register and the progress schedules shall be coordinated.

### 3.3 SCHEDULING

Submittals covering component items forming a system or items that are interrelated shall be scheduled to be coordinated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled. Adequate time (a minimum of 30 calendar days exclusive of mailing time) shall be allowed and shown on the register for review and approval. No delay damages or time extensions will be allowed for time lost in late submittals.

### 3.4 TRANSMITTAL FORM (ENG FORM 4025)

The sample transmittal form (ENG Form 4025), listed as an attachment in Section 00100, shall be used for submitting both Government approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms will be furnished to the Contractor, or may be copied from the attached form. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. Special care shall be exercised to ensure proper listing of the specification paragraph and/or sheet number of the contract drawings pertinent to the data submitted for each item.

### 3.5 SUBMITTAL PROCEDURE

Submittals shall be made as follows:

#### 3.5.1 Procedures

Submittals shall be made as stipulated in paragraph "Contractor Submittal Procedures" of the "SPECIAL CONTRACT REQUIREMENTS" (Section 00800) and as specified herein. Contractor shall forward four (4) copies of each submittal to the Area Office as indicated in Section 00800, clause entitled "Physical Data."

### 3.5.2 Deviations

For submittals which include proposed deviations requested by the Contractor, the column "variation" of ENG Form 4025 shall be checked. The Contractor shall set forth in writing the reason for any deviations and annotate such deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

### 3.6 CONTROL OF SUBMITTALS

The Contractor shall carefully control his procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

### 3.7 GOVERNMENT APPROVED SUBMITTALS

Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so stamped and dated. The distribution of approved copies will be as specified in the Contract Clause (Section 00700) entitled "Specifications and Drawings for Construction."

### 3.8 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Approval of the Contracting Officer is not required on information only submittals.

### 3.9 RESERVATION OF RIGHTS

The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so prescribe.



## 3.10 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements shall be similar to the following:

CONTRACTOR  (Firm Name)
  _____ Approved
  _____ Approved with corrections as noted on submittal data and/or attached sheets(s).
  SIGNATURE: _____
TITLE: _____
DATE: _____

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## SECTION 01355

## ENVIRONMENTAL PROTECTION

## PART 1 GENERAL

## 1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

## CODE OF FEDERAL REGULATIONS (CFR)

40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 279	Standards for the Management of Used Oil
49 CFR 171 - 178	Hazardous Materials Regulations

## 1.2 DEFINITIONS

## 1.2.1 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

## 1.2.2 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during dredging operations. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

## 1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed of, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction.

### 1.3 GENERAL REQUIREMENTS

The Contractor shall minimize environmental pollution and damage that may occur as the result of dredging operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract. The Contractor shall comply with all applicable environmental Federal, State, and local laws and regulations. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

### 1.4 SUBCONTRACTORS

The Contractor shall ensure compliance with this Section by subcontractors.

### 1.5 PAYMENT

No separate payment will be made for work covered under this Section. The Contractor shall be responsible for payment of fees associated with environmental permits, application, and/or notices obtained by the Contractor. All costs associated with this Section shall be included in the payment item(s) shown in Section 00010, "SOLICITATION, OFFER AND AWARD (SF1442) AND BIDDING SCHEDULE." The Contractor shall be responsible for payment of all fines/fees for violation or non-compliance with Federal, State, Regional and local laws and regulations.

### 1.6 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330, "SUBMITTAL PROCEDURES":

#### SD-01, Preconstruction Submittals

##### Environmental Protection Plan; G,TSD

The Contractor shall submit an Environmental Protection Plan within ten (10) days after receipt of the Notice to Proceed.

##### Preconstruction Inspection

The Contractor shall submit a joint condition inspection report prior to starting any on-site dredging activities.

### 1.7 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing dredging activities, the Contractor shall submit an Environmental Protection Plan for review and approval by the Contracting Officer. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during dredging operations. Approval of the Contractor's plan will not relieve the Contractor of responsibility for adequate and continuing control of pollutants and other environmental

protection measures. The Contractor shall utilize the format of the Environmental Protection Plan Template which is included as an attachment to this solicitation. The Environmental Protection Plan shall be current and maintained on-site by the Contractor.

#### 1.7.1 Compliance

No requirement in this Section shall be construed as relieving the Contractor of any applicable Federal, State, and local environmental protection laws and regulations. During construction, the Contractor shall be responsible for identifying, implementing, and submitting for approval any additional requirements to be included in the Environmental Protection Plan.

#### 1.7.2 Contents

The Environmental Protection Plan shall include, but shall not be limited to, the following:

- a. Procedures to be implemented to provide the required environmental protection, to comply with the applicable laws and regulations, and to correct pollution due to accident, natural causes, or failure to follow the procedures of the Environmental Protection Plan.
- b. Permit or license and the location of the solid and/or liquid waste disposal area(s).
- c. Drawings showing locations of any proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials.
- d. Description of the Contractor's environmental protection personnel training program.
- e. A list of Federal, State, and local laws, regulations, and permits concerning environmental protection, pollution control and abatement that are applicable to the Contractor's proposed operations and the requirements imposed by those laws, regulations, and permits. Also requirements set forth in the Contract Clauses (Section 00700) titled "Clean Air and Water" and "Permits and Responsibilities."
- f. Methods of protecting surface and ground water during dredging activities.
- g. List of fish and wildlife that requires special attention along with measures for their protection as stated in paragraph "Fish and Wildlife."
- h. Traffic control plans including measures to reduce erosion of temporary roadbeds by dredging traffic, especially during wet weather. Plan shall include measures to minimize the amount of mud transported onto paved public roads by vehicles or runoff. The Contractor shall provide signage meeting the approval of the Contracting Officer and furnish a flag person to control traffic at the entrance road for the duration of the hauling by truck.

i. Work area plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas including methods for protection of features to be preserved within authorized work areas like trees, shrubs, vines, grasses and ground cover, landscape features, air and water quality, fish and wildlife, soil, wetlands, historical, archaeological and cultural resources, structures and utilities.

j. Spill Response Plan for each type of contaminant that may be encountered during the course of the work. The plan shall include provisions for immediate notification to the Contracting Officer and other applicable regulatory agencies. The notification shall include a description of the material spilled, quantities, location, time, date, the containment procedures effectuated, and the proposed cleanup procedures. The plan shall list the trigger-point quantity at which each contaminant becomes subject to a mandatory reporting procedure. The plan shall also include provisions for communicating with the press and other governmental agencies having an interest. The names, addresses, telephone numbers and contact persons for each possible point of contact shall be listed in the plan.

k. Environmental monitoring plans for the job site, including land, water, air, and noise monitoring.

l. A recycling and solid waste minimization plan with a list of measures to reduce consumption of energy and natural resources. The plan shall detail the Contractor's actions to comply with and to participate in Federal, State, Regional, and local government sponsored recycling programs to reduce the volume of solid waste at the source.

#### 1.8 PRECONSTRUCTION INSPECTION

Prior to starting any on-site dredging activities, the Contractor and the Contracting Officer shall make a joint condition inspection after which the Contractor shall prepare a brief report indicating on a layout plan the condition of docks/property to be used, confined disposal facility areas, trees, shrubs and grassed areas immediately adjacent to work sites and adjacent to the assigned storage area and access routes as applicable. This report must be signed by both the Contracting Officer and the Contractor upon mutual agreement as to its accuracy and completeness.

#### 1.9 MEETINGS

The Contractor shall meet with representatives of the Contracting Officer to alter the Environmental Protection Plan as needed for compliance with the environmental pollution control program.

#### 1.10 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

Any deviations, requested by the Contractor, from the drawings, plans and specifications which may have an environmental impact will be subject to approval by the Contracting Officer and may require an extended review, processing, and approval time. The Contracting Officer reserves the right to disapprove alternate methods, even if they are more cost effective, if the Contracting Officer determines that the proposed alternate method will have an adverse environmental impact.

### 1.11 NOTIFICATION

The Contracting Officer will notify the Contractor in writing of any observed noncompliance with Federal, State or local environmental laws or regulations, permits, and other elements of the Contractor's Environmental Protection Plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take such action when approved by the Contracting Officer. The Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the Contracting Officer may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal Law.

### 1.12 LITIGATION

If work is suspended, delayed, or interrupted due to a court order of competent jurisdiction, the Contracting Officer will determine whether the order is due in any part to the acts or omissions of the Contractor, or subcontractors at any tier, not required by the terms of the contract. If it is determined that the order is not due to Contractor's failing, such suspension, delay, or interruption shall be considered as ordered by the Contracting Officer in the administration of the contract under the Contract Clause (Section 00700) titled "Suspension of Work."

## PART 2 PRODUCTS (Not Applicable)

## PART 3 EXECUTION

### 3.1 ENVIRONMENTAL PERMITS AND LICENSES

The Contractor shall obtain all needed permits or licenses with respect to disposal of dredged material outside of the Government-furnished disposal areas. The Contractor shall be responsible for operating within the conditions of the Government-obtained Section 401 State Water Quality Certification, Coastal Management Program requirements, and other environmental approvals. The Government will not obtain any other permits for this project; see Contract Clause (Section 00700) titled "Permits and Responsibilities." The Contractor shall be responsible for implementing the terms and requirements of the appropriate permits as needed and for payment of all fees.

### 3.2 CONTRACTOR FACILITIES AND WORK AREAS

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings, if required, shall be placed in areas approved by the Contracting Officer. Temporary movement or relocation of Contractor facilities shall be made only upon approval of the Contracting Officer.



### 3.3 PROTECTION OF ENVIRONMENTAL RESOURCES

The environmental resources within the project boundaries and those affected outside the limits of permanent work under this contract shall be protected during the entire period of the contract. The Contractor shall confine activities to areas defined on the contract drawings and specifications. Environmental protection shall be as stated in the following paragraphs.

### 3.4 WATER RESOURCES

The Contractor shall keep dredging activities under surveillance, management, and control to prevent pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation when such application may cause contamination of the fresh water reserve. The Contractor shall not create unnecessary turbidity which may degrade water quality or adversely affect aquatic life. All water areas affected by dredging activities shall be monitored by the Contractor. For construction activities immediately adjacent to impaired surface waters, the Contractor shall be capable of quantifying sediment or pollutant loading to that surface water when required by State or Federally issued Clean Water Act permits.

#### 3.4.1 Washing and Curing Water

Waste waters directly derived from dredging activities shall not be allowed to enter water areas unless it meets U.S. Environmental Protection Agency and applicable State water quality criteria. The Contractor shall be responsible for the removal and disposition of waste water, including any filtering, ponding or other treatment.

#### 3.4.2 Spillages

Special measures shall be taken by the Contractor to prevent chemicals, fuels, oils, greases, bituminous materials, ashes, sawdust, waste washings, herbicides and insecticides, rubbish or sewage, and other pollutants from entering public waters.

#### 3.4.3 Fish and Wildlife

The Contractor shall keep dredging operations under surveillance, management, and control, to minimize interference with, disturbance to, and damage of fish and wildlife. The Contractor shall not be permitted to disturb native habitat either in, or adjacent to the project area which, in the opinion of the Contracting Officer, are critical to fish and wildlife. Species that require specific attention along with measures for their protection shall be listed by the Contractor prior to beginning of dredging operations.

### 3.5 AIR RESOURCES

The Contractor shall keep dredging operations under surveillance, management, and control, to minimize pollution of air resources. All activities, equipment, processes, and work performed by the Contractor in accomplishing the specified dredging shall be in accordance with the State laws and all Federal emission and performance laws and standards. Ambient Air Quality Standards set by the U.S. Environmental Protection Agency shall

be maintained. Monitoring of air quality shall be the Contractor's responsibility. All air areas affected by the dredging activities shall be monitored by the Contractor. Monitoring results will be periodically reviewed by the Government to ensure compliance. Special management techniques, as set out below, shall be implemented to control air pollution by the dredging activities under this contract.

#### 3.5.1 Particulates

Dust particles; aerosols and gaseous by-products from dredging activities shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, spoil areas, and other work areas within or outside the project boundaries free from particulates which would cause the Federal, State, and local air pollution standards to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish these tasks. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs. The Contractor shall comply with all State and local visibility regulations.

#### 3.5.2 Odors

Odors from dredging activities shall be controlled at all times. The odors shall not cause a health hazard and shall be in compliance with State regulations and/or local ordinances.

#### 3.5.3 Sound Intrusions

The Contractor shall keep dredging activities under surveillance and control to minimize environment damage by noise. Methods and devices to control noise emitted by equipment shall be utilized.

#### 3.5.4 Hydrocarbons and Carbon Monoxide

Hydrocarbons and carbon monoxide emissions from equipment shall be controlled to Federal and State allowable limits at all times.

### 3.6 CHEMICAL MATERIALS MANAGEMENT AND WASTE DISPOSAL

Disposal of any materials, waste, effluents, trash, garbage, unsatisfactory excavated materials, oil, grease, chemicals, etc., in areas adjacent to streams, rivers, or lakes and in areas not authorized for waste disposal will not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to the condition of the adjacent undisturbed area. If necessary, ground which has become contaminated through the fault or negligence of the Contractor shall be excavated, disposed of as directed by the Contracting Officer, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation, all at the expense of the Contractor. Disposal of waste, trash and other materials off the project site shall be in accordance with all applicable Federal, State and

local laws and requirements. Disposal of wastes shall be as directed below, unless otherwise specified in other sections and/or shown on the drawings.

### 3.6.1 Solid Wastes

Solid wastes shall be placed in containers which are emptied on a regular schedule. Handling, storage, and disposal shall be conducted to prevent contamination. Segregation measures shall be employed so that no hazardous or toxic waste will become co-mingled with solid waste. The Contractor shall transport solid waste from the work area and dispose of it in compliance with Federal, State, and local requirements for solid waste disposal. A Subtitle D RCRA permitted landfill shall be the minimum acceptable off-site solid waste disposal option. The Contractor shall verify that the selected transporters and disposal facilities have the necessary permits and licenses to operate. The Contractor shall comply with Federal, State, and local laws and regulations pertaining to the use of landfill areas.

### 3.6.2 Chemicals and Chemical Wastes

Chemicals shall be dispensed ensuring no spillage to the ground or water. Periodic inspections of dispensing areas to identify leakage and initiate corrective action shall be performed and documented. This documentation will be periodically reviewed by the Government. Chemical waste shall be collected in labeled corrosion resistant, compatible containers. Collection drums shall be monitored and removed to a staging or storage area when contents are within 6 inches of the top. Wastes shall be classified, managed, stored, and disposed of in accordance with Federal, State, and local laws and regulations.

### 3.6.3 Contractor Generated Hazardous Wastes/Excess Hazardous Materials

Hazardous wastes are defined in 40 CFR 261, or are as defined by applicable State and local regulations. Hazardous materials are defined in 49 CFR 171 - 178. The Contractor shall, at a minimum, manage and store hazardous waste in compliance with 40 CFR 262. The Contractor shall take sufficient measures to prevent spillage of hazardous and toxic materials during dispensing. The Contractor shall segregate hazardous waste from other materials and wastes, shall protect it from the weather by placing it in a safe covered location, and shall take precautionary measures such as berming or other appropriate measures against accidental spillage. The Contractor shall be responsible for storage, describing, packaging, labeling, marking, and placarding of hazardous waste and hazardous material in accordance with 49 CFR 171 - 178, State, and local laws and regulations. The Contractor shall transport Contractor generated hazardous waste off the work site within 60 days in accordance with the Environmental Protection Agency and the Department of Transportation laws and regulations. The Contractor shall dispose of hazardous waste in compliance with Federal, State and local laws and regulations. Spills of hazardous or toxic materials shall be immediately reported to the Contracting Officer. Cleanup and cleanup costs due to spills shall be the Contractor's responsibility. The disposition of Contractor generated hazardous waste and excess hazardous materials are the Contractor's responsibility.

#### 3.6.4 Fuel and Lubricants

Storage, fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants and oil shall be managed and stored in accordance with all Federal, State, Regional, and local laws and regulations. Used lubricants and used oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with 40 CFR 279, State, and local laws and regulations. There shall be no storage of fuel on the project site. Fuel must be brought to the project site each day that work is performed.

#### 3.6.5 Waste Water

Waste water from dredging shall not be allowed to enter water ways or to be discharged prior to being treated to remove pollutants. Dredging related waste water shall be disposed of off-Government property in accordance with all Federal, State, Regional and local laws and regulations.

#### 3.7 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

Existing historical, archaeological, and cultural resources within the Contractor's work area will be so designated by the Contracting Officer if any has been identified. The Contractor shall take precautions to preserve all such resources as they existed at the time they were first pointed out. The Contractor shall provide and install protection for these resources and be responsible for their preservation during the life of the contract. If during excavation or other dredging activities any previously unidentified or unanticipated resources are discovered or found, all activities that may damage or alter such resources shall be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rocks or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human activities. Upon such discovery or find, the Contractor shall immediately notify the Contracting Officer. While waiting for instructions the Contractor shall record, report, and preserve the finds in accordance with Section 00700, CONTRACT CLAUSE entitled "DIFFERING SITE CONDITIONS."

#### 3.8 PREVIOUSLY USED EQUIPMENT

The Contractor shall thoroughly clean all previously used dredging equipment prior to bringing it into the work area. The Contractor shall ensure that the equipment is free from soil residuals, egg deposits from plant pests, noxious weeds, and plant seeds. The Contractor shall consult with the USDA jurisdictional office for additional cleaning requirements.

#### 3.9 MAINTENANCE OF POLLUTION FACILITIES

The Contractor shall maintain permanent and temporary pollution control facilities and devices for the duration of the contract or for that length of time dredging activities create the particular pollutant.

### 3.10 RESTORATION OF LANDSCAPE DAMAGE

The Contractor shall restore landscape features damaged or destroyed during dredging operations inside and outside the limits of the approved work areas.

### 3.11 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection. The training shall include methods of detecting and avoiding pollution, familiarization with pollution standards, both statutory and contractual, and installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental pollution control.

### 3.12 QUALITY CONTROL

The Contractor shall establish and maintain quality control, according to the provisions of Section 01451, "CONTRACTOR QUALITY CONTROL" for environmental protection of all items set forth herein. The Contractor shall record on daily reports, any problems in complying with laws, regulations and ordinances, and any corrective action taken.

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## SECTION 01420

## SOURCES FOR REFERENCE PUBLICATIONS

## PART 1 GENERAL

## 1.1 REFERENCES

Various publications are referenced in other sections of the specifications to establish requirements for the work. These references are identified in each section by document number, date and title. The document number used in the citation is the number assigned by the sponsoring organization, e.g. ASTM B 564 Nickel Alloy Forgings. However, when the sponsoring organization has not assigned a number to a document, an identifying number has been assigned for reference purposes.

## 1.2 ORDERING INFORMATION

The addresses of the organizations whose publications are referenced in other sections of these specifications are listed below, and if the source of the publications is different from the address of the sponsoring organization, that information is also provided. Documents listed in the specifications with numbers which were not assigned by the sponsoring organization should be ordered from the source by title rather than by number.

## CODE OF FEDERAL REGULATIONS (CFR)

Order from:  
Government Printing Office  
Washington, DC 20402  
Ph: 202-512-1800  
Fax: 202-275-7703  
Internet: <http://www.gpo.gov>  
AOK 8/00  
LOK 6/00

## PART 2 PRODUCTS (Not Applicable)

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## SECTION 01451

## CONTRACTOR QUALITY CONTROL

## PART 1 GENERAL

## 1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330, "SUBMITTAL PROCEDURES":

## SD-01, Preconstruction Submittals

## Contractor Quality Control Plan; G,AOF

The Contractor shall furnish for review by the Government, not later than ten (10) days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of Section 00700, CONTRACT CLAUSES, clause entitled "Inspection of Construction."

## 1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all costs associated therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

## PART 2 PRODUCTS (Not Applicable)

## PART 3 EXECUTION

## 3.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause (Section 00700) titled "Inspection of Construction." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all dredging operations, both on-site and off-site, and shall be keyed to the proposed dredging sequence. The project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract. The project superintendent in this context shall be the highest level manager responsible for the overall dredging activities at the site,

including quality and production. The project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Contracting Officer, and shall be responsible for all dredging and dredging related activities at the site.

### 3.2 CONTRACTOR QUALITY CONTROL PLAN

The CQC Plan shall identify personnel, procedures, control, instructions, tests, records, and forms to be used. The Contractor shall utilize the format of the Contractor Quality Control Plan Template which is included as an attachment to this solicitation. The Government will consider an interim plan for the first fifteen (15) days of operation. Dredging will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

#### 3.2.1 Content of the CQC Plan

The CQC Plan shall include, as a minimum, the following to cover all dredging operations, both on-site and off-site, including work by subcontractors, fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three-phase control system for all aspects of the work specified. The staff shall include a CQC System Manager who shall report to the project superintendent.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall also be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01330, "SUBMITTAL PROCEDURES."
- e. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- f. Procedures for tracking dredging deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified deficiencies have been corrected.

- g. Reporting procedures, including proposed reporting formats.
- h. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable feature under a particular section. This list will be agreed upon during the coordination meeting.

### 3.2.2 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of dredging. Acceptance is conditional and will be predicated on satisfactory performance during the dredging. The Government reserves the right to require the Contractor to make changes in his CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

### 3.2.3 Notification of Changes

After acceptance of the CQC Plan, the Contractor shall notify the Contracting Officer in writing a minimum of seven (7) calendar days prior to any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

## 3.3 COORDINATION MEETING

After the Preconstruction Conference, before start of dredging, and prior to acceptance by the Government of the CQC Plan, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. The CQC Plan shall be submitted for review a minimum of five (5) calendar days prior to the Coordination Meeting. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both on-site and off-site work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting will be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

## 3.4 QUALITY CONTROL ORGANIZATION

### 3.4.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager and sufficient number of additional qualified personnel to ensure safety and contract compliance. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed

properly will also be included as part of the CQC organization. The Contractor's CQC staff shall maintain a presence at the site at all times during progress of the work and have complete authority and responsibility to take any action necessary to ensure contract compliance. The CQC staff shall be subject to acceptance by the Contracting Officer. The Contractor shall provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Complete records of all letters, material submittals, shop drawing submittals, schedules and all other project documentation shall be promptly furnished to the CQC organization by the Contractor. The CQC organization shall be responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to the Contracting Officer.

#### 3.4.2 CQC System Manager

The Contractor shall identify as CQC System Manager an individual within the on-site work organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall be a graduate engineer or a graduate of construction management, with a minimum of 1 year of dredging experience on dredging projects similar to this contract or an experienced dredging person with a minimum of 3 years experience in related work. This CQC System Manager shall be on the site at all times during dredging and shall be employed by the prime Contractor. The CQC System Manager shall be assigned as System Manager but may have duties as Project Superintendent in addition to quality control. An alternate for the CQC System Manager shall be identified in the plan to serve in the event of the System Manager's absence. The requirements for the alternate shall be the same as for the designated CQC System Manager.

#### 3.4.3 CQC Personnel

In addition to CQC personnel specified elsewhere in the contract, the Contractor shall provide as part of the CQC organization specialized personnel to assist the CQC System Manager for the following areas: civil and environmental. These individuals shall be directly employed by the prime Contractor, unless waived in writing by the Contracting Officer, and may not be employed by a supplier or sub-contractor on this project; be responsible to the CQC System Manager; be physically present at the dredging site during work on their areas of responsibility; have the necessary education and/or experience to fulfill their required tasks. These individuals may perform other duties but must be allowed sufficient time to perform their assigned quality control duties as described in the Quality Control Plan.

#### 3.4.4 Additional Requirement

In addition to the above experience and/or education requirements, if the contract exceeds \$1 million, the CQC System Manager shall have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered and arrangements for attendance can be made with the U.S. Army Engineer District, Buffalo; Technical Services Division.

### 3.4.5 Organizational Changes

The Contractor shall maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, the Contractor shall revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

### 3.5 SUBMITTALS

Submittals shall be made as specified in Section 01330, "SUBMITTAL PROCEDURES." The CQC organization shall be responsible for certifying that all submittals are in compliance with the contract requirements.

### 3.6 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the dredging activities, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control shall be conducted by the CQC System Manager for each definable feature of work as follows:

#### 3.6.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work, after all required plans/documents are approved/accepted, and after copies are at the work site. This phase shall include:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. A copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field shall be made available by the Contractor at the preparatory inspection. These copies shall be maintained in the field and available for use by Government personnel until final acceptance of the work.
- b. A review of the contract drawings.
- c. A check to assure that all plans and/or equipment have been submitted and approved.
- d. Review of provisions that have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. A physical examination of required materials and equipment to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document dredging tolerances and workmanship standards for that feature of work.

- i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government shall be notified at least twenty-four (24) hours in advance of beginning the preparatory control phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

### 3.6.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

- a. A check of work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government shall be notified at least twenty four (24) hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.
- g. The initial phase should be repeated for each new crew to work on-site, or any time acceptable specified quality standards are not being met.

### 3.6.3 Follow-up Phase

Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not conceal non-conforming work.

### 3.6.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, on-site production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

## 3.7 COMPLETION INSPECTION

### 3.7.1 Punch-Out Inspection

Near the end of the work, or any increment of the work established by a time stated in the paragraph, "Commencement, Prosecution, and Completion of Work" of Section 00800, "SPECIAL CONTRACT REQUIREMENTS," or stated elsewhere in the specifications, the CQC Manager shall conduct an inspection of the work. A punch list of items which do not conform to the approved drawings and specifications shall be prepared and included in the CQC documentation, as required by paragraph "DOCUMENTATION." The list of deficiencies shall include the estimated date by which the deficiencies will be corrected. The CQC System Manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected. Once this is accomplished, the Contractor shall notify the Government that the project is ready for the Government Final Inspection.

### 3.7.2 Final Acceptance Inspection

The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative shall be in attendance at the final acceptance inspection. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the final sounding surveys. Notice shall be given to the Contracting Officer at least 14 days prior to the final acceptance inspection and shall include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the contract clause (Section 00700) titled "Inspection of Construction".

## 3.8 DOCUMENTATION

The Contractor shall maintain current records providing factual evidence that required quality control activities have been performed. These records shall include the work of subcontractors and suppliers and shall be on an acceptable form that includes, as a minimum, the following information:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.

- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number. As work under this contract proceeds, the contractor shall keep a record of specific information about the dredging operations. This record shall list the date, time, station, cut or offset distance, the load number, an estimate of the material in the scow at that time, and a note field. A new line in this record shall be completed at the beginning of each shift, the end of each shift, when a scow is filled, when a new scow is brought in, and whenever there is a break or change in the location of the cut or a delay greater than 15 minutes. The note field shall be used to record the event (from those listed in the previous sentence) which triggered the entry of the information.
- d. Control activities performed with results and references to specifications/drawings requirements. The control phase shall be identified (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals reviewed, with contract reference, by whom, and action taken.
- g. Off-site surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.

These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Government daily within twenty four (24) hours after the date covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every 7 days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC System Manager. The report from the CQC System Manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.



### 3.9 SAMPLE FORMS

Sample forms are listed as attachments in Section 00100, "INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS."

### 3.10 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --

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## SECTION 02481

## MAINTENANCE DREDGING

## PART 1 GENERAL

## 1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330, "SUBMITTAL PROCEDURES":

## SD-01, Preconstruction Submittals

## Conveyance Method; G,AOF

Methods, equipment, and layout of operations, and sequence of placement of dredged material in the Government-furnished Confined Disposal Facility (CDF), prior to the placement of any dredged material. This submittal is only applicable for projects where CDF disposal is used.

## Contractor-Furnished Disposal Area; G,TSD

Statements and permits indicating suitability of Contractor-furnished disposal area(s). This submittal is only applicable for projects using Contractor-furnished disposal area(s).

## SD-11, Closeout Submittals

## Material Disposal Records

Records indicating quantity and location of dredged material placement in the Government-furnished open-lake and nearshore disposal area(s). This submittal is only applicable for projects where open-lake or nearshore disposal is used.

## 1.2 MEASUREMENT AND PAYMENT

## 1.2.1 General

All costs of implementation shall be included in the payment item(s) shown in Section 00010, Solicitation, Offer and Award (SF 1442) and Bidding Schedule. The material to be paid for will be measured by computing the in-place quantity (cubic yards) available within the maximum pay prism (as stated in paragraph "Specific Areas" of this Section), as determined from the "before" soundings, less the quantity remaining within the maximum pay prism as determined from the "after" soundings, less any deductions that

may be required for misplaced material (described in paragraph "Misplaced Materials" of this Section). No payment will be made for quantities that exceed the maximum quantity limits established by the Contracting Officer. The "after" sounding survey will be made within fourteen (14) calendar days after each acceptance section has been completed. All soundings for measurement purposes will be performed in accordance with the Special Contract Requirements (Section 00800), clause "Quantity Surveys" and paragraph "Quantity Determination" of this Section. Payment will be made at the unit price per cubic yard for dredging, which price shall include all costs for labor and equipment for excavation, transporting, and disposal of material specified herein and as shown on the contract drawings.

#### 1.2.2 In-place Payment Quantities

In-place payment quantities will be computed by the Government using channel limits, or other dredging limits established by the Contracting Officer, and stationing as computed by the Government. It is the responsibility of the Contractor to compute and verify such limits and quantities before the commencement of dredging. The Contractor will be furnished drawings depicting both the "before" and "after" dredging soundings along with computer printouts of the soundings if done by the electronic measuring system, or copies of the original field notes if done by conventional methods. Determination of the final quantities will be based on the original (before contract dredging) surveys and on the surveys made for Contract Clause (Section 00700) "Final Examination and Acceptance." The total quantities to be paid for under this contract will be that quantity of dredged material removed from within the maximum pay prism, shown on the contract drawing, and disposed of in accordance with the provisions of these specifications, that do not exceed the total quantities established by the Contracting Officer pursuant to paragraph "Specific Areas and Periods" of this Section. The method used to calculate quantities will be software from Coastal Oceanographics, Inc., either the standard HYPACK method or the TIN method as determined prior to taking the "before" soundings.

#### 1.2.3 Acceptance Section Lengths

The Government will make a final examination and acceptance as specified in Contract Clause (Section 00700) "Final Examination and Acceptance." Examination for acceptance will not be performed until all dredging required under this contract, within 500 feet of the acceptance section, has been completed, or to a point where, in the judgement of the Contracting Officer, further dredging in the contract area will not cause shoaling or damage to the acceptance section. Unless specifically designated in the Special Contract Requirements (Section 00800), clause "Physical Data," acceptance section lengths for hydraulic dredges with a cutterhead and mechanical dredges will be a minimum 2,500 feet. Acceptance section lengths for hopper dredges will be a minimum of 5,000 feet. The acceptance section lengths will be determined by the Contracting Officer prior to the commencement of dredging.

#### 1.2.4 Quantity Determination

Original and final surveys performed by the Government for purposes of acceptance and determining excess quantities will be made using a standard 8-pound sounding lead or basket with tagline, or an electronic fathometer (single and/or multibeam), as determined by the Government. The method

used to obtain the original (before contract dredging) survey shall also be used to obtain the final (after contract dredging) survey. Soundings are normally taken at 20-foot intervals no greater than 20 feet along lines equivalent to 100 foot or less stationing, as calculated by standard HYPACK software, from Coastal Oceanographics, Inc.

#### 1.2.5 Completion of Work

The Contractor shall advise the Contracting Officer approximately seven (7) working days prior to completion of dredging operations to allow adequate time for the scheduling of a survey crew to perform examination soundings.

#### 1.3 DESCRIPTION

The work under this Section includes removal and disposal of material, whether natural or man-made, from within the dredging limits of the Federal navigational channel as shown on the contract drawing.

#### 1.4 COORDINATION

The Contractor, pursuant to Contract Clause (Section 00700) "Other Contracts," shall coordinate his efforts with any other Contractors or Government plant that may be using either the work or disposal areas to avoid any interference in work schedules.

#### 1.5 DATUM AND BENCH MARKS

The plane of reference of low water datum as used in these specifications is that determined by the bench marks listed in the Special Contract Requirements, clause "Physical Data."

### PART 2 PRODUCTS (Not Applicable)

### PART 3 EXECUTION

#### 3.1 SPECIAL INSTRUCTIONS

##### 3.1.1 Specific Areas and Periods

The specific areas, between the upper and lower limits of dredging, where the Contractor shall be directed and required to remove shoals will be determined by the Contracting Officer from surveys made by the Government indicating the condition of the channels prior to dredging operations. The Contracting Officer will designate the actual areas and the sequence of the areas to be dredged from the above surveys. The Contracting Officer may limit the quantity of material to be dredged from any or all of these specified areas to control the payment quantity. As part of the Contractor's Quality Control system, the Contractor is required to monitor his removal operations to assure that the final total quantity specified by the Contracting Officer is not exceeded. Material dredged beyond this quantity will not be paid for

##### 3.1.2 Notification

As indicated in the Special Contract Requirements (Section 00800) clause "Physical Data," the Contractor shall notify the regional Coast Guard District, at least two (2) weeks prior to commencement of dredging,

concerning the presence of Coast Guard-owned cables and the necessary action and coordination to prevent cable damage, and any other applicable entities specified.

### 3.1.3 Restriction

The Contractor shall not dredge below a grade three (3) feet above pipes, cables, tunnels, and other submerged crossings shown on the contract drawings or indicated in these specifications (see Special Contract Requirements (Section 00800) clauses "Drawings, Maps, and Specifications" and "Physical Data"). This restriction applies for a distance of twenty-five (25) feet upstream and twenty-five (25) feet downstream of each channel crossing. Any existing crossing that is damaged due to Contractor operations shall be repaired by the Contractor at his expense.

### 3.1.4 Examination of Records

All bidders are expected to examine the contract drawings, the site of the work and any records of previous dredging. Responsibility for the accuracy of the dredging records, which are available at the office of the District Commander, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199, is not assumed by the Government.

### 3.1.5 Order of Work

The order of work for dredging shall be as specified in the Special Contract Requirements (Section 00800), clause "Physical Data."

## 3.2 CHARACTER OF MATERIAL

The material to be removed is composed of silt, sand, and other soil sediments that have been deposited in shoals since the channels were last dredged. Included for removal from all portions of the channels may be items such as boulders, tree trunks, dock timbers, automobiles, old piling, and similar materials.

## 3.3 DISPOSAL OF DREDGED MATERIALS

### 3.3.1 General

The material dredged shall be transported and placed in the Government-furnished disposal area(s) as shown on the contract drawing(s), and/or in an authorized Contractor-furnished disposal area(s). All nautical vessels, pipelines, and land-based transport and conveyance systems shall be operated, loaded and unloaded in such a manner as to prevent overflow, spills, leaks, waste, or other loss of any dredged material between point of pickup and point of deposition within the disposal area(s). Hauling vessels shall have sufficient sidewall height and integrity to prevent drainage over or through the sides and bottom during hauling. No boulders, broken concrete, or other similar type debris shall be disposed of in the disposal area(s). For disposal of this type of debris, see paragraph "Other Removed Materials" of this Section.

3.3.2 Disposal in Government-furnished Disposal Area (Required method if bid award is based upon Bidding Schedule "A")

3.3.2.1 Confined Disposal Facility (CDF) Disposal

The following requirements pertain to projects utilizing a Government-furnished CDF.

a. Conveyance Method. The dredged material shall be conveyed into the CDF, as further described in these specifications, by an approved method; however, the method of conveying the dredged material to the disposal facility shall be such as to prevent the loss of any water or material into the area outside the facility. The Contractor shall not be permitted to deposit any dredged material in the channels for the purpose of rehandling into the disposal facility. If the dredged material is transferred from scows to the CDF by bucket type equipment, provisions shall be made underneath the transfer equipment to catch drippings of water and dredged material and to prevent such water and material from escaping into the area outside of the CDF. If the material is conveyed from scows or hoppers to the disposal facility by pumping, water from outside the CDF may be used.

b. Pumpout Facilities. Written approval from the Contracting Officer is required prior to the construction of any temporary mooring or pumpout facility by the Contractor. Any temporary mooring or pumpout facility shall be removed within ten (10) days after the completion of the dredging and disposal operations of this contract unless the Contractor obtains a Department of the Army Permit to leave the structure in place. The permit would require the removal of the facility not later than the completion of the filling of the CDF. If permits are desired, applications shall be made by the Contractor within thirty (30) days after receipt of the Notice of Award.

c. Pumpout Line Inspection. The Contractor shall inspect the pumpout line for leaks at 0800 and 1600 hours each day the pumpout line is used. Any leaks shall be repaired within twenty-four (24) hours. Any leaks outside the CDF area shall require immediate shutdown of pumping operations until the pipe is repaired.

d. Dredged Material Placement. Dredged material shall be placed directly into the CDF, at the discharge location indicated on the contract drawing(s). The dredged material shall be placed directly into the indicated area(s) and shall not be re-handled in any way during the placement procedure. The Contractor shall place the dredged material in such a manner to insure positive drainage towards the weir.

The Contractor shall monitor the placement of material to prevent the development of isolated ponding areas. Placement of any dredged material within the CDF is prohibited until the placement procedure has been approved by the Contracting Officer. Any damages caused to the CDF by the Contractor's operations shall be completely repaired, to the satisfaction of the Contracting Officer, at no additional cost to the Government. Additionally, the Contractor shall adhere to the site-specific requirements specified in the Special Contract Requirements (Section 00800), clause "Physical Data."



### 3.3.2.2 Open-Lake Disposal

The following requirements pertain to projects utilizing a Government-furnished open-lake disposal area.

a. Procedure. The Contractor shall discharge dredged material within the disposal area as indicated on the contract drawing(s) and in accordance with any site-specific requirements specified in the Special Contract Requirements (Section 00800), clause "Physical Data." The portion of the disposal area to be used shall be plainly marked, by the Contractor, with conspicuous buoys that shall have reflective tape or markers. Materials shall only be discharged, within the disposal area, five (5) feet below the surface of the water to minimize disruption of water quality. Prior to opening its doors, the transporting vessel shall be as stationary as is safely possible over the disposal area to minimize turbidity and sediment dispersal. Washout shall be performed only as necessary and while as stationary as is safely possible over the disposal area.

b. Limits on Open-Lake Disposal. The limit of dredged material allowed to be discharged into the open-lake disposal area, as authorized under Section 404 of the Clean Water Act (33 USC 1344), is specified in the Special Contract Requirements (Section 00800), clause "Physical Data." The Contractor shall carefully monitor the discharges to assure that this quantity is not exceeded, unless notified in writing, by the Contracting Officer, that additional discharges have been authorized. Discharges of dredged material, in excess of authorized amounts, shall be considered an obstruction of a navigable waterway, in accordance with the Special Contract Requirements (Section 00800), clause "Obstruction of Navigable Waterways," and shall be removed by, or for, the Contractor, at his expense. Discharges of dredged material in excess of authorized amounts may also be considered knowing violations of the Clean Water Act and referred for appropriate enforcement action under Sections 309 and 404 of the Clean Water Act (33 USC 1319 and 1344).

c. Material Disposal Records. The Contractor shall maintain a log or record listing the date, quantity, and location of each load of dredged material placed in the open-lake disposal area, and shall maintain a track plot showing vessel displacement versus location encompassing areas in and adjacent to the disposal area, along with the name of the individual having responsibility for assuring the accuracy of the information. This information shall be submitted to the Contracting Officer on a daily basis, attached to each day's Quality Control report, in accordance with Section 01451, "CONTRACTOR QUALITY CONTROL".

### 3.3.2.3 Nearshore Disposal

The following requirements pertain to projects utilizing a Government-furnished nearshore disposal area.

a. Procedure. The Contractor shall discharge dredged material within the disposal area as indicated on the contract drawing(s) and in accordance with any site-specific requirements specified in the Special Contract Requirements (Section 00800), clause "Physical Data." Buoys shall be placed prior to disposal to demarcate the boundaries of the

nearshore disposal area. Dredged material shall be placed as close to shore as possible, at this location. In order to place the material as close to shore as practical, the disposal vessel shall be moved shoreward into shallower water as it is being unloaded. Individual bins in bottom dump scows shall be opened in sequence, if possible, to enhance disposal in shallower depths.

b. Vessel Cleanliness. Only clean vessels shall be used to transport dredged materials for nearshore disposal. Prior to their use, they shall be inspected and approved by the Contracting Officer and/or his Representative.

c. Material Disposal Records. The Contractor shall maintain a log or record listing the date, quantity, and location of each load of dredged material placed in the nearshore disposal area, and shall maintain a track plot showing vessel displacement versus location encompassing areas in and adjacent to the disposal area, along with the name of the individual having responsibility for assuring the accuracy of the information. This information shall be submitted to the Contracting Officer on a daily basis, attached to each day's Quality Control report, in accordance with Section 01451, "CONTRACTOR QUALITY CONTROL".

### 3.3.3 Disposal in Contractor-furnished Disposal Area, With Bid (Required method if bid is awarded under Bidding Schedule "B")

#### 3.3.3.1 Required Documents

If a Contractor-furnished area or areas are proposed, the bid shall be accompanied by a document which includes written permission of the owners of the property proposed as disposal areas and of the property involved in obtaining access to the disposal area, as well as dimensions of the area or areas proposed.

#### 3.3.3.2 Required Forms

A form is enclosed, listed as an attachment in Section 00100, "Instructions, Conditions, and Notice to Bidders", indicating information to be submitted by the Contractor for any Contractor-furnished disposal area. All expenses incurred in connection with providing and making available such Contractor-furnished disposal areas shall be borne by the contractor, and all materials deposited therein, and all operations in connection therewith shall be at the Contractor's risk.

#### 3.3.3.3 Coordination with Agencies

The Contractor shall coordinate on the use of the proposed Contractor-furnished disposal area with the agencies specified in the Special Contract Requirements (Section 00800), clause "Physical Data" and shall submit with his bid, written approval of these agencies for the use of the disposal area(s).

#### 3.3.3.4 Material Placement Restrictions

The material shall be disposed of in an area enclosed by embankments or bulkheads to confine or grade the material, with necessary waste weir, provided and maintained by the Contractor, and the cost of constructing and maintaining such enclosure shall be included in the contract unit prices.

The operation of disposing of material in the disposal area(s) shall be conducted in a manner that will limit the concentration of solids discharging over the waste weir or contained in any drainage or seepage from the area to levels acceptable to State and local agencies having jurisdiction on discharges in the location of the disposal area. Suspended solids test shall be performed hourly on discharge over any waste weir or drainage or seepage from a Contractor-furnished disposal area, until a representative composite sampling frequency can be determined and agreed upon by the Contracting Officer's Representative. The suspended solids test shall be performed according to "Standard Methods For the Examination of Water and Wastewater". If these tests indicate that solids are in a concentration greater than permitted under this contract, the use of such disposal area shall be stopped immediately. Use of the Contractor-furnished disposal area shall not be resumed until the Contractor can demonstrate to the satisfaction of the Contracting Officer that he has modified his operations to such an extent that the discharge over the waste weirs or the drainage or seepage will contain solid material to acceptable concentrations. If, at any time, use of the Contractor-furnished disposal area is suspended or stopped for any reason, the Contractor shall continue operations and place all dredged material in the Government-furnished disposal area at no additional cost to the Government. The Contractor shall remove and transport dredged material in a manner as to prevent spillage into any waterway, on streets or adjacent areas. Local regulations regarding hauling and disposal apply.

#### 3.3.4 Disposal in Contractor-furnished Disposal Area, After Award

If, after the award of the contract, the Contractor proposes a disposal area other than that stipulated in these specifications, he shall submit the document, approvals, and understandings, required by paragraphs "Required Documents", "Required Forms", and "Coordination with Agencies", to the Contracting Officer for approval. Acceptance of the proposed site may require an adjustment in the contract price, if found necessary by the Contracting Officer, to protect the interests of the Government. All expenses incurred in connection with providing and making available such disposal areas shall be borne by the Contractor, and all materials deposited thereof, and all operations in connection therewith shall be at the Contractor's risk.

#### 3.3.5 Other Removed Materials

All tree trunks, dock timbers, old piles, boulders, and other similar type debris materials removed in connection with the dredging operations shall be disposed of ashore above the high-water mark, to the satisfaction of the Contracting Officer. The disposal area shall be obtained by the Contractor and shall comply with all Federal, State, and local regulations.

#### 3.3.6 Misplaced Materials

Any dredged material that is deposited elsewhere than in places designated or approved by the Contracting Officer will not be paid for and the Contractor may be required to remove such misplaced material and deposit it where directed at his expense.

### 3.3.7 Condition of Scows, Hoppers, and Pipelines

All scows and hoppers used for transporting the dredged material shall be kept in good condition with coamings in repair. Doors of dump vessels shall be maintained in good repair and sealed in a proper manner to prevent the loss of dredged material. Decks of vessels shall be cleaned of dredged material before leaving the dredging area. Pipelines in hydraulic dredging systems shall be kept in good condition, free of leaks.

### 3.3.8 Unloading of Scows

When scow unloading is performed with the use of a clamshell or bucket, the disposal area enclosure shall be returned to its original condition by removing all material deposited thereon to the satisfaction of the Contracting Officer.

## 3.4 ALLOWANCES AND TOLERANCES

### 3.4.1 Overdepth

Allowable overdepth in this contract is one (1) foot below the required pay prism as shown on the contract drawing(s) and stated herein. Dredged material actually removed to maximum pay prism, as computed by the Government in accordance with paragraph "MEASUREMENT AND PAYMENT," will be paid for at the contract unit price per cubic yard.

### 3.4.2 Excessive Dredging

Any material removed below the overdepth allowance will be considered excessive dredging and will not be paid for. Any existing channel crossing that is damaged due to dredging operations, shall be repaired by the Contractor at his expense.

### 3.4.3 Sideslopes

The Contractor is not permitted to perform maintenance dredging outside the Federal channel limits. However, sideslope material above the maximum pay prism that falls into the channel limits and is removed will be paid for.

### 3.4.4 Shoal Removal

Nothing herein shall be construed to prevent payment for the removal of shoals performed in accordance with the Contract Clause (Section 00700) titled "Final Examination and Acceptance" or Special Contract Requirement (Section 00800), clause "Shoaling."

## 3.5 DREDGING METHODS

The Contractor is not restricted from using any specific plant or equipment in the work that can satisfactorily perform the required dredging, except as indicated in the Special Contract Requirements (Section 00800), clause "Physical Data." Sediments shall be transferred from the dredge to a scow by direct release from the dredging bucket if a clamshell is used; or by pumping into a scow either adjacent to the dredge or docked along the pier, if a cutterhead is used. If an extensive pipeline is required, it shall be assembled and located to prevent or minimize effects on water quality,

navigation, and sport fishing. The Contractor shall refer to the Special Contract Requirements (Section 00800), clauses "Commencement, Prosecution, and Completion of Work" and "Physical Data" of this specification for further guidance concerning dredging operations.

### 3.6 LAYOUT OF WORK

The Contractor shall lay out his work from the Government-established ranges and gauges indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platform equipment, range markers, and labor as may be required in laying out any part of the work from the ranges and gauges established by the Government. The Contractor shall be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall also be the responsibility of the Contractor to maintain and preserve all stakes and other marks established. The coordinates of contract limits, triangulation points, and traverse points in the vicinity of the work are available in the Operations & Readiness Branch, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, New York 14207-3199, between the hours of 8:00 AM and 4:00 PM, Monday through Friday. This information will also be made available to the Contractor at the Pre-Construction Meeting.

-- End of Section --

## PREPARATORY INSPECTION CHECKLIST

CONTRACT NO. \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SPECS. SECTION: \_\_\_\_\_

MAJOR DEFINABLE SEGMENT OF WORK: \_\_\_\_\_

### A. PERSONNEL PRESENT:

	<u>NAME</u>	<u>POSITION</u>	<u>COMPANY</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____

### B. REVIEW OF PLANS AND SPECIFICATIONS

#### B-I. IDENTIFY EACH SPECIFICATION SECTION THAT WAS REVIEWED AT THIS PREPARATORY INSPECTION.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

#### B-II. IDENTIFY EACH CONSTRUCTION PLAN DETAIL OR SHEET THAT WAS REVIEWED AT THIS PREPARATORY INSPECTION.

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### C. TRANSMITTAL INVOLVED

	<u>NUMBER &amp; ITEM</u>	<u>CODE</u>	<u>CONTRACTOR OR GOVERNMENT APPROVAL</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

C-I. HAVE ALL ITEMS INVOLVED BEEN APPROVED? YES\_\_\_\_\_ NO\_\_\_\_\_

C-II. WHAT ITEMS HAVE NOT BEEN APPROVED?

	<u>ITEM</u>	<u>STATUS</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

D. ARE ALL MATERIALS ON HAND? YES\_\_\_\_\_ NO\_\_\_\_\_

D-I. ARE ALL MATERIALS ON HAND IN ACCORDANCE WITH APPROVALS? YES\_\_\_\_\_ NO\_\_\_\_\_

D-II. ITEMS NOT ON HAND OR NOT IN ACCORDANCE WITH TRANSMITTALS:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

D. TESTS REQUIRED IN ACCORDANCE WITH CONTRACT REQUIREMENTS:

	<u>TEST</u>	<u>PARAGRAPH</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

E. ACCIDENT PREVENTION PREPLANNING – HAZARD CONTROL MEASURES:

E-I. APPLICABLE OUTLINES (ATTACH COMPLETED COPIES):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

E-II. OPERATIONAL EQUIPMENT CHECKLISTS

ATTACHED FOR

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

ON FILE FOR

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

\_\_\_\_\_  
QUALITY CONTROL – PRIME CONTRACTOR

### INITIAL INSPECTION CHECKLIST

CONTRACT NO: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION AND LOCATION OF WORK INSPECTED: \_\_\_\_\_

SPECS SECTION: \_\_\_\_\_ REFERENCE CONTRACT DRAWINGS: \_\_\_\_\_

A. PERSONNEL PRESENT:

	<u>NAME</u>	<u>POSITION</u>	<u>COMPANY</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____

B. MATERIALS BEING USED ARE IN STRICT COMPLIANCE WITH THE CONTRACT PLANS AND SPECIFICATIONS:

YES \_\_\_\_\_ NO \_\_\_\_\_

IF NOT, EXPLAIN: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

C. PROCEDURES AND/OR WORK METHODS WITNESSED ARE IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE CONTRACT SPECIFICATIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

IF NOT, EXPLAIN: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

D. WORKMANSHIP IS ACCEPTABLE YES \_\_\_\_\_ NO \_\_\_\_\_

STATE AREAS WHERE IMPROVEMENT IS NEEDED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

E. SAFETY VIOLATIONS AND CORRECTIVE ACTION TAKEN: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
QUALITY CONTROL REPRESENTATIVE



**PROPOSED CONTRACTOR-FURNISHED DISPOSAL AREA**  
(SOLICITATION No. \_\_\_\_\_)

**Location of Disposal Area:**

---

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---

**Quantity of Material:** Material to be disposed of in the Contractor-Furnished Disposal Area is \_\_\_\_\_ CY  
(cubic yards) of material.

**Name of Owner:**

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---

**Note:**

1. Attached is a drawing of the disposal area showing dimensions, appurtenant property lines, etc.
2. Attached is a document containing written permission by the owner for use of the disposal area by:

\_\_\_\_\_

(Name of Bidder)

3. Attached are documents containing written approval of the agencies listed in Section 02481,  
“MAINTENANCE DREDGING”, paragraph 3.3.3.3 of this specification.

\_\_\_\_\_  
(Signature of Bidder)

## CONSTRUCTION QUALITY CONTROL MANAGEMENT REPORT

DATE \_\_\_\_\_ REPORT NO. \_\_\_\_\_ CONTRACTOR \_\_\_\_\_

PROJECT NAME \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ LOCATION \_\_\_\_\_

WEATHER: TYPE \_\_\_\_\_

TEMPERATURE \_\_\_\_\_ (MAX) \_\_\_\_\_ (MIN)

RAINFALL \_\_\_\_\_ GAUGE READING \_\_\_\_\_

EMPLOYEES: SUPERVISORY \_\_\_\_\_ SKILLED \_\_\_\_\_ LABORERS \_\_\_\_\_

LENGTH OF SHIFT \_\_\_\_\_ HOURS

### I. WORK RESPONSIBILITY: NAME (PRIME OR SUBCONTRACTOR) AND AREA OF RESPONSIBILITY

A. \_\_\_\_\_

B. \_\_\_\_\_

C. \_\_\_\_\_

D. \_\_\_\_\_

E. \_\_\_\_\_

### II. WORK PERFORMED TODAY:

(LOCATION, DESCRIPTION, QUANTITY AND RESPONSIBILITY BY LETTER REFERENCE / RELATE TO ITEMS ON THE PROGRESS CHART OF CPM)

### III. INSPECTION:

(DESCRIPTION OF INSPECTION AND LOCATION. INCLUDE OFF-SITE, MATERIALS, AND EQUIPMENT INSPECTION)

#### A. PREPARATORY PHASE:

#### B. INITIAL PHASE:

#### C. CONTINUOUS PHASE:

### IV. RESULTS OF INSPECTIONS:

(INCLUDE FINDINGS, DEFICIENCIES OBSERVED AND CORRECTIVE ACTION)

**V. TEST PERFORMED:**

(TYPE, LOCATION, RESULTS INCLUDING FAILURES & REMEDIAL ACTION. ATTACHE COPY OF TEST REPORT OR NOTATION WHEN IT WILL BE FURNISHED)

**VI. WORK ITEMS BEHIND SCHEDULE:**

(REASON, EFFECT ON PROGRESS SCHEDULE AND ACTIONS TAKEN)

**VII. JOB SAFETY:**

(REPORT CONDITIONS, DEFICIENCIES, CORRECTIVE ACTION AND RESULTS)

**VIII. REMARKS:**

(LIST ATTACHMENTS AND OTHER MANAGEMENT ACTIONS TAKEN TO ASSURE QUALITY)

-----

**NOTE: IF INSPECTIONS AND RESULTS ARE NOT LISTED, THEN IT IS ASSUMED THAT QUALITY CONTROL IS NOT BEING IMPLEMENTED.**

THE ABOVE REPORT IS COMPLETE AND CORRECT AND ALL MATERIALS AND SUPPLIES INCORPORATED IN WORK ARE IN COMPLIANCE WITH THE TERMS OF THE CONTRACT EXCEPT AS NOTED:

\_\_\_\_\_  
(CONTRACTOR'S APPROVED REPRESENTATIVE SIGNATURE)

**BID BOND**  
(See instructions on reverse)

DATE BOND EXECUTED (Must not be later than bid opening date)

FORM APPROVED OMB NO.

9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP  
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Name and business address)

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS		
					FOR (Construction, Supplies or Services)	

**OBLIGATION:**

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties with the Principal, we bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a prosecution or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, to the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The Principal has submitted the bid identified above.

**THEREFORE:**

The above obligation is void if the Principal - (a) upon receipt by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

**WITNESS:**

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

**PRINCIPAL**

SIGNATURE(S)	1.	2.	3.	Corporate Seal
	(Seal)	(Seal)	(Seal)	
NAME(S) & TITLE(S) (Type)	1.	2.	3.	Corporate Seal

**INDIVIDUAL SURETY(IES)**

SIGNATURE(S)	1.	2.
	(Seal)	(Seal)
NAME(S) (Type)	1.	2.

**CORPORATE SURETY(IES)**

SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Type)	1.	2.	

**CORPORATE SURETY(IES) (Continued)**

<b>SURETY B</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			
<b>SURETY C</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			
<b>SURETY D</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			
<b>SURETY E</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			
<b>SURETY F</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			
<b>SURETY G</b>	NAME & ADDRESS			STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.		\$	
	NAME(S) & TITLE(S) (Type)	1.	2.			

**INSTRUCTIONS**

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. A authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed \_\_\_\_\_ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.  
 (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

<b>PERFORMANCE BOND</b> (See Instructions on reverse)		DATE BOND EXECUTED (Must be same or later than date of contract)																	
PRINCIPAL (Legal name and business address)		TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION																	
SURETY(IES) (Name(s) and business address(es))		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center;">PENAL SUM OF BOND</th> </tr> <tr> <td style="width: 25%;">MILLION(S)</td> <td style="width: 25%;">THOUSAND(S)</td> <td style="width: 25%;">HUNDRED(S)</td> <td style="width: 25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">CONTRACT DATE</td> <td style="width: 50%;">CONTRACT NO.</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>		PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE	CONTRACT NO.		
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**OBLIGATION:**

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any one of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The Principal has entered into the contract identified above

**THEREFORE.**

The above obligation is void if the Principal —

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are agreed to by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and perform and fulfill all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

**WITNESS**

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL				
Signature(s)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	Corporate Seal	
	(Seal)	(Seal)		
Name(s) & Title(s) (Typed)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
INDIVIDUAL SURETY(IES)				
Signature(s)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
	(Seal)	(Seal)		
Name(s) (Typed)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
CORPORATE SURETY(IES)				
SURETY A	Name & Address	STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	Signature(s)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	
	Name(s) & Title(s) (Typed)	1. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	2. <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	

NSN 7540-01-152-8060  
 PREVIOUS EDITION USABLE

25-106

STANDARD FORM 26 (REV. 10-83)  
 Prescribed by GSA  
 FAR (48 CFR 53.228 (b))

CORPORATE SURETY(IES) (Continued)						
<b>SURETY B</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY C</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY D</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY E</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY F</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY G</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT	<b>Corporate Seal</b>
	Signature(s)	1.	2.		\$	
	Name(s) & Title(s) (Typed)	1.	2.			

<b>BOND PREMIUM</b>	▶	RATE PER THOUSAND	TOTAL
		\$	\$

### INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorization person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE

SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

<b>PAYMENT BOND</b> <i>(See Instructions on reverse)</i>	<b>DATE BOND EXECUTED</b> <i>(Must be same or later than date of contract)</i>																
<b>PRINCIPAL</b> <i>(Legal name and business address)</i>	<b>TYPE OF ORGANIZATION</b> <i>("X" one)</i> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> JOINT VENTURE         </div> <div> <input type="checkbox"/> PARTNERSHIP  <input type="checkbox"/> CORPORATION         </div> </div> <b>STATE OF INCORPORATION</b>																
<b>SURETY(IES)</b> <i>(Name(s) and business address(es))</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align: center;">PENAL SUM OF BOND</th> </tr> <tr> <td style="width: 25%;">MILLION(S)</td> <td style="width: 25%;">THOUSAND(S)</td> <td style="width: 25%;">HUNDRED(S)</td> <td style="width: 25%;">CENTS</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">CONTRACT DATE</td> <td style="width: 50%;">CONTRACT NO.</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> </table>	PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE	CONTRACT NO.		
PENAL SUM OF BOND																	
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS														
CONTRACT DATE	CONTRACT NO.																

**OBLIGATION:**

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The above obligation is void if the Principal promptly makes good on all persons having a direct relationship with the Principal or a sub-contractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract or subsequently are made. Notice of those modifications to the Surety(ies) are waived.

**WITNESS:**

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL						
Signature(s)	1.	2.	Corporate Seal			
	(Seal)	(Seal)				
Name(s) & Title(s) <i>(Typed)</i>	1.	2.				
INDIVIDUAL SURETY(IES)						
Signature(s)	1.	2.	(Seal)			
Name(s) <i>(Typed)</i>	1.	2.				
CORPORATE SURETY(IES)						
SURETY A	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	Signature(s)	1.	2.			
	Name(s) & Title(s) <i>(Typed)</i>	1.	2.			



**CORPORATE SURETY(IES) (Continued)**

<b>SURETY B</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY C</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY D</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY E</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY F</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			
<b>SURETY G</b>	Name & Address			STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	Signature(s)	1.	2.			
	Name(s) & Title(s) (Typed)	1.	2.			

**INSTRUCTIONS**

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270 a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear

in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction regarding adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.



COST DATA										
ITEMS								COST		
PAYROLLS (gross) _____ \$ _____										
LESS SUBSISTENCE AND QUARTERS _____								\$ _____		
SUBSISTENCE _____										
FUEL _____ BBLs. AT \$ _____										
WATER _____										
LUBRICANTS _____										
PLANT RENTAL _____										
INSURANCE _____										
ATTENDANT PLANT _____										
MISCELLANEOUS _____										
TOTAL PLANT OPERATING COST _____										
\$ _____ HAULED \$ _____ AGITATED										
SURVEYS _____ \$ _____										
INSPECTION AND SUPERVISION _____										
OVERHEAD _____										
OTHER INDIRECT COSTS _____										
SUBTOTAL _____										
TOTAL COST _____										
TOTAL COST PER CUBIC YARD:		+ SHOALING		TOTAL COST TO		FORMULA: EXCESS YARDAGE _____ EXCESS + CREDIT X SHOALING - SCOURING x TOTAL COST				
CREDITED		CREDITED - SCOURING		REMOVE EXCESS						
JOB EST _____ \$ _____		\$ _____		\$ _____						
THIS PERIOD _____ \$ _____		\$ _____		\$ _____						
JOB TO DATE _____ \$ _____		\$ _____		\$ _____						
OPERATING COST PER MINUTE AT WORK _____ \$ _____										
(Based on effective plus noneffective time)										
DATA FROM PLANT COST AND RENTAL LEDGERS										
BOOK VALUE _____ 19 _____								\$ _____		
BALANCE IN PLANT RENTAL ACCOUNT _____										
ADDITIONS AND BETERMENTS TO VESSELS _____										
A N N U A L	COSTS CHARGED TO PLANT RENTAL:									
	DEPRECIATION _____									
	CESSATION OF WORK _____									
	REPAIRS TO HULL _____									
	REPAIRS TO MACHINERY _____									
	SMALL TOOLS, ROPE, ETC. _____									
TOTAL COST _____										
								CHIEF BUDGET AND ACCOUNTS BRANCH		
REMARKS										
SUBMITTED BY			RECOMMENDED			APPROVED				
TITLE			TITLE			TITLE CORPS OF DISTRICT ENGINEER				



## INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.
2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmittals mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.
3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

### THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- |   |   |
|---|---|
| A -- Approved as submitted.   | E -- Disapproved (See attached).  |
| B -- Approved, except as noted on drawings.   | F -- Receipt acknowledged.  |
| C -- Approved, except as noted on drawings.<br>Refer to attached sheet resubmission required. | FX -- Receipt acknowledged, does not comply<br>as noted with contract requirements. |
| D -- Will be returned by separate correspondence.   | G -- Other ( <i>Specify</i> )   |

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

REPORT OF OPERATIONS—PIPELINE, DIPPER OR BUCKET DREDGES										REPORTS CONTROL SYMBOL ENG CW-0-13	
THRU:			TO:			FROM:			REPORT NO		
CHARACTER OF REPORT		<input type="checkbox"/> MAINTENANCE <input type="checkbox"/> NEW WORK <input type="checkbox"/> DAILY <input type="checkbox"/> STATUS <input type="checkbox"/> COMPLETION <input type="checkbox"/> ANNUAL							DATE OR PERIOD		
		NAME AND TYPE					SIZE		PIPELINE		DIPPER OR BUCKET
DREDGE		HORSEPOWER OF		DREDGE PUMP		SUCTION PIPE JET		CUTTER OR BUCKET		PROPULSION	
		NUMBER OF CREW MEMBERS		DREDGE		SHORE		OTHER PLANT		TOTAL	
PROJECT AND BAR		NAME				AUTH DIMENSIONS		WIDTH		DEPTH	
		LOCATION (include station numbers)									
CHARACTER OF MATERIAL		ABSOLUTE DENSITY				IN PLACE DENSITY				VOIDS RATIO	
		GRAIN SIZE				G.M.S./liter				GEOLOGICAL CLASSIFICATION	
CONTRACT OR DREDGING ORDER		NUMBER				<input type="checkbox"/> CONTRACTOR <input type="checkbox"/> HIRED LABOR				TOTAL NO. OF DAYS ON WHICH WORK WAS DONE	
		AVERAGE DEPTH		BEFORE DREDGING		AFTER DREDGING		MINIMUM SOUNDING		BEFORE DREDGING	
CHANNEL CONDITION		MINIMUM		TIME		MAXIMUM		TIME		GAGE LOCATION	
WEATHER CONDITION		(clear, cloudy, rain, snow, and fog)						VISIBILITY		WIND (maximum velocity & direction)	
								miles			
WORK PERFORMED						DISTRIBUTION OF TIME					
ITEM		UNIT		QUANTITY		EFFECTIVE WORKING TIME (chargeable to cost of work)				HOURS   MIN.	
AVERAGE WIDTH OF CUT		FEET				PUMPING OR DREDGING					
TOTAL ADVANCE THIS PERIOD		FEET				PCT. OF EFFECTIVE RENTAL TIME				%	
TOTAL ADV. PREVIOUS TO THIS PERIOD		FEET				BOOSTER (in line)				Hrs.   Min.	
TOTAL ADVANCE TO DATE		FEET				NON-EFFECTIVE WORKING TIME (chargeable to cost of work)					
FLOATING PIPE:		SHORE PIPE:				HANDLING PIPE LINES					
TOTAL LENGTH OF DISCHARGE PIPE		FEET				HANDLING ANCHOR LINES					
AVERAGE LIFT		FEET				CLEARING PUMP AND PIPE LINE					
AVERAGE PUMP SPEED		R.P.M.				CLEARING CUTTER OR SUCTION HEAD					
AVG. DREDGED PER PUMP, HR, GROSS		CU. YDS.				WAITING FOR SCOWS					
SCOWS LOADED		NUMBER				TO AND FROM WHARF OR ANCHORAGE					
AVERAGE LOAD PER SCOW		CU. YDS.				CHANGING LOCATION OF PLANT ON JOB					
CUBIC YARDS REMOVED						LOSS DUE TO OPPOSING NATURAL ELEMENTS					
AMOUNT DREDGED THIS PERIOD:						LOSS DUE TO PASSING VESSELS					
(1) GROSS (computed amount)						SHORE LINE AND SHORE WORK					
(2) CREDITED (pay place)						WAITING FOR BOOSTER					
AMOUNT PREVIOUSLY REPORTED:						MINOR OPER. REPAIRS (explain in remarks)					
(1) GROSS (computed amount)						WAITING FOR ATTENDANT PLANT					
(2) CREDITED (pay place)						PREPARATION AND MAKING UP TOW					
TOTAL AMOUNT DREDGED TO DATE:						TRANSFERRING PLANT BETWEEN WORKS					
(1) GROSS (computed amount)						LAY TIME OFF SHIFT AND SATURDAYS					
(2) CREDITED (pay place)						SUNDAYS AND HOLIDAYS					
ATTENDANT PLANT						FIRE DRILL					
ITEM		NAME OR NUMBER		HOURS		MISCELLANEOUS (explain in remarks)					
						TOTAL NON-EFFECTIVE WORKING TIME					
						PCT. OF NON-EFFECTIVE RENTAL TIME				%	
						TOTAL EFFECTIVE AND NON-EFFECTIVE TIME (chargeable to cost of work)					
						PCT. OF TOTAL TIME IN PERIOD				%	
						LOST TIME (not chargeable to cost of work)					
						MAJOR REPAIRS AND ALTERATIONS					
						CESSATION					
						COLLISIONS					
						MISCELLANEOUS (explain in remarks)					
NUMBER OF INSPECTIONS		BY DISTRICT PERSONNEL		BY DIV & OCE PERSONNEL		TOTAL LOST TIME					
						PERCENTAGE OF TOTAL TIME				%	
CONTRACT USE ONLY		HAS ANYTHING DEVELOPED WHICH MIGHT LEAD TO A CHANGE ORDER OR CLAIM? <input type="checkbox"/> NO <input type="checkbox"/> YES (If "YES", explain under remarks on back)				TOTAL TIME IN PERIOD					

SUMMARY OF COSTS					
ITEMS					COST
<b>DIRECT PLANT OPERATING COSTS</b>					
UNIFORM DAILY RATE BASIS <i>(To be completed when submitting Status and Completion reports.)</i>					
CHARGES: _____ DAYS AT \$ _____ PER DAY <i>(Item 19, ENG Form 22 (Costs) — adjusted to exclude plant increment cost.)</i>					
► OR ◄					
ACTUAL PLANT COSTS <i>(To be completed when submitting Annual report.)</i>					
PAYROLLS <i>(gross)</i> .....					\$
SUBSISTENCE & QUARTERS OR PER DIEM & MILEAGE.....					\$
FUEL _____ BARRELS AT \$ _____ PER BARREL.....					\$
WATER.....					\$
LUBRICANTS.....					\$
PLANT OWNERSHIP COSTS <i>(as computed below)</i> .....					\$
INSURANCE.....					\$
ATTENDANT PLANT.....					\$
MISCELLANEOUS.....					\$
SUBTOTAL—UNIFORM DAILY RATE OR ACTUAL COSTS.....					\$
SUBTOTAL—PLANT UNIT COST \$ _____ PER CUBIC YARD.....					
<b>SHORE WORK</b>					
SUBTOTAL—SHORE WORK COSTS.....					\$
SUBTOTAL—SHORE WORK UNIT COSTS \$ _____ PER CUBIC YARD.....					
<b>OTHER COSTS</b>					
SURVEYS.....					\$
INSPECTION AND SUPERVISION.....					\$
OVERHEAD.....					\$
OTHER INDIRECT COSTS.....					\$
SUBTOTAL—OTHER COSTS.....					\$
SUBTOTAL—OTHER UNIT COST \$ _____ PER CUBIC YARD.....					
GRAND TOTAL—ALL COSTS.....					\$
GRAND TOTAL—ALL UNIT COSTS \$ _____ PER CUBIC YARD.....					
<b>OPERATING SUPPLIES</b>					<b>ANNUAL REPORT DATA</b> <i>(complete when submitting Annual report)</i>
COMMODITIES	CONSUMED		INVENTORY		
	UNIT	QUANTITY	QUANTITY	VALUE	
FUEL <i>(oil)</i>	BBLs				COST PER RENTAL MINUTE <i>(Based on total operating cost)</i> .....
LUBRICANT <i>(oil)</i>	GAL				\$ per min.
LUBRICANT <i>(grease)</i>	LBS				TOTAL COST OF PLANT <i>(End of F.Y. reporting period)</i> .....
WATER	GAL				\$
					BOOK VALUE <i>(End of F.Y. reporting period)</i> .....
					\$
					BALANCE IN PLANT ACCOUNT <i>(End of F.Y. reporting period)</i> .....
					\$
					PLANT OWNERSHIP COSTS <i>(Actual for F.Y. reporting period):</i>
SUBSISTENCE SUPPLIES.....					DEPRECIATION.....
MISCELLANEOUS SUPPLIES.....					\$
TOTAL.....				\$	REPAIRS <i>(Adjusted)</i> .....
					\$
					CESSATION OF WORK.....
					\$
					SMALL TOOLS, ETC.....
					\$
REMARKS					TOTAL.....
					\$
SUBMITTED BY <i>(Name, title, and signature)</i>		RECOMMENDED BY <i>(Name, title, and signature)</i>		APPROVED BY <i>(Name, title, and signature)</i>	

## General Decision Number IL020018

General Decision Number **IL020018**

Superseded General Decision No. IL010018

State: **Illinois**

Construction Type:

DREDGING

MARINE

County(ies):

STATEWIDE

**ILLINOIS**, INDIANA, MICHIGAN, MINNESOTA, NEW YORK, OHIO,  
PENNSYLVANIA AND WISCONSIN

DREDGING AND MARINE CONSTRUCTION

Dredging and Marine Construction Projects: floating/land equipment engaged in clamshell, backhoe and dragline dredging, marine construction, bridges, salvage operations and cranes, loaders, dozers, or other equipment used for disposal of dredge spoils or marine construction materials on land at the slip or dock, at the project site, where the above material/spoils is being handled, and all equipment utilized on breakwall/breakwater structures on the Great Lakes, Islands therein, their connecting and tributary waters, including the **Illinois** Waterway to the Loc at Lockport, **Illinois**, the New York State Barge Canal System between Tonawanda, New York and Waterford, New York and Oswego, New York, the Duluth-Superior area to the Fond du Lac Bridge Crossing (Minnesota State Highway 23) on the St. Louis River and on the St. Lawrence River eastward to the International Boundary near St. Regis, New York.

Modification Number	Publication Date
0	03/01/2002
1	01/10/2003

COUNTY(ies):

STATEWIDE

\* SUIL2001A 01/01/2003

	Rates	Fringes
MECHANICAL DREDGING (CLAMSHELL, DRAGLINE, AND BACKHOE) AND MARINE CONSTRUCTION):		

FLOATING EQUIPMENT:

Indiana:

Class I	33.50	10.95+b&c
Class II	32.00	10.95+b&c
Class III	28.45	10.95+b&c
Class IV	23.65	10.95+b&c

**Illinois:**

Class I	36.30	10.95+b&c
Class II	34.80	10.95+b&c
Class III	31.00	10.95+b&c
Class IV	25.75	10.95+b&c

Michigan:

Class I	26.75	14.58+b&c
Class II	25.25	14.58+b&c
Class III	22.50	14.58+b&c
Class IV	18.70	14.58+b&c

Minnesota:

Class I	35.60	7.55+b&c
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Class II	34.10	7.55+b&c
Class III	30.35	7.55+b&c
Class IV	25.25	7.55+b&c
New York:		
(Cattaraugus, Chautauga, Erie and Orleans Counties):		
Class I	26.96	13.56+b&c
Class II	25.46	13.56+b&c
Class III	22.66	13.56+b&c
Class IV	18.85	13.56+b&c
(Cayuga, Jefferson, Oswego, and St. Lawrence Counties):		
Class I	25.30	8.85+b&c
Class II	23.80	8.85+b&c
Class III	21.20	8.85+b&c
Class IV	17.65	8.85+b&c
(Niagara):		
Class I	24.90	11.90+b&c
Class II	23.40	11.90+b&c
Class III	20.80	11.90+b&c
Class IV	17.30	11.90+b&c
(Monroe and Wayne Counties and the City of Rochester):		
Class I	27.50	9.00+b&c
Class II	26.00	9.00+b&c
Class III	23.15	9.00+b&c
Class IV	19.25	9.00+b&c
Ohio:		
(Ashtabula, Cuyahoga, Erie, Lake, and Lorain Counties):		
Class I	31.15	7.10+b&c
Class II	29.65	7.10+b&c
Class III	26.39	7.10+b&c
Class IV	21.94	7.10+b&c
(Lucas, Henry, Ottawa, Wood and Sandusky Counties):		
Class I	29.43	7.10+b&c
Class II	27.93	7.10+b&c
Class III	24.86	7.10+b+c
Class IV	20.67	7.10+b&c
Pennsylvania:		
(Erie County):		
Class I	24.57	8.74+b&c
Class II	23.07	8.74+b&c
Class III	20.67	8.74+b&c
Class IV	17.77	8.74+b&c
Wisconsin:		
Includes all marine/floating type work on projects in the Superior/Duluth Harbor, Lake Superior.		
Class I	31.48	11.15+b&c
Class II	29.98	11.15+b&c
Class III	26.68	11.15+b&c
Class IV	22.18	11.15+b&c
HYDRAULIC DREDGING:		
TUG OPERATOR - Vessel Over 800 Horse- Power	26.49	7.61+a+b

LAUNCH OPERATOR - Vessel 800 Horse-		
Power Or Less	25.15	7.61+a+b
TUG ENGINEER	26.49	7.61+a+b
TUG WORKERS:		
Fireman, Lineman, Oiler,		
Deckhand, Tankerman. Scowman, (on/or		
with tugboats, launches,		
or other self-propelled		
boats)	22.51	7.61+a+b
DREDGE WORKERS:		
Lead Deckhand	29.68	7.61+a+b
Fireman, Oiler, Deckhand, &		
Scowman (with dipper, hydraulic		
or other floating equipment engaged in		
hydraulic and dipper dredging operations)		
Pipeline men, (both afloat & ashore including		
loading, unloading, maintaining, and handling		
pipelines for hydraulic dredges and sandboats)		
Rangeman, Tankerman, Sweepman and service		
Truck Driver	22.51	7.61+a+b
PAID HOLIDAYS (WHERE APPLICABLE):		
A- NEW YEAR'S DAY, B- MEMORIAL DAY, C- INDEPENDENCE DAY, D-LABOR		
DAY, E- THANKSGIVING DAY, F- CHRISTMAS DAY, G- PRESIDENT'S		
DAY, H- VETERAN'S DAY.		
FOOTNOTES:		
a. \$30.10 per day per employee for medical		
b. Eight paid holidays: A thru H		
c. Hazardous/Toxic Waste Material:		
*Level A \$2.50 per hour		
*Level B 2.00 per hour		
*Level C 1.00 per hour		
*Level D 0.50 per hour		
Such wages shall be above the classifications of work		
listed under mechanical dredging and Marine construction		
of this general wage decision.		
*Working with Hazardous Waste at this level as defined by the		
U. S. Enviromental Protection Agency.		
CLASSIFICATION DESCRIPTIONS		
Class I - Master Mechanic - assist and direct Class II, Class		
III, and Class IV, diver/wet tender, engineer		
(hydraulic dredge)		
Class II - Crane/Backhoe Operator and Mechanic/Welder,		
assistant engineer(hydraulic dredge), leverman		
(hydraulic dredge), diver/tender		
Class III - Deck Equipment Operator (Machineryman)		
Maintenance of Crane (over 50 ton capacity)		
or Backhoe (115,000 pounds or more), ug/launch		
operator, Loader/dozer and like equipment on Barge,		
breakwater wall, slip/dock, Scow, Deck Machinery,		
etc.		
Class IV - Deck Equipment Operator(Machineryman/Fireman)		
(Four equipment units or more) and Crane Maintenance		
50 ton capacity and under or Backhoe weighing 115,000		
pounds or less, assistant tug operator.		
-----		
WELDERS - Receive rate prescribed for craft performing operation		
to which welding is incidental.		

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

## General Decision Number MI020018

General Decision Number **MI020018**

Superseded General Decision No. MI010018

State: **Michigan**

Construction Type:

HOPPER DREDGE WORK

County(ies):

ALCONA	EMMET	MENOMINEE
ALGER	GOGEBIC	MONROE
ALLEGAN	GRAND TRAVERSE	MUSKEGON
ALPENA	HOUGHTON	OCEANA
ANTRIM	HURON	ONTONAGON
ARENAC	IOSCO	OTTAWA
BARAGA	KEWEENAW	PRESQUE ISLE
BAY	LEELANAU	SANILAC
BENZIE	LUCE	SCHOOLCRAFT
BERRIEN	MACKINAC	ST CLAIR
CHARLEVOIX	MACOMB	TUSCOLA
CHEBOYGAN	MANISTEE	VAN BUREN
CHIPPEWA	MARQUETTE	WAYNE
DELTA	MASON	

HOPPER DREDGE CONSTRUCTION PROJECTS

Modification Number      Publication Date

0      03/01/2002

COUNTY(ies):

ALCONA	EMMET	MENOMINEE
ALGER	GOGEBIC	MONROE
ALLEGAN	GRAND TRAVERSE	MUSKEGON
ALPENA	HOUGHTON	OCEANA
ANTRIM	HURON	ONTONAGON
ARENAC	IOSCO	OTTAWA
BARAGA	KEWEENAW	PRESQUE ISLE
BAY	LEELANAU	SANILAC
BENZIE	LUCE	SCHOOLCRAFT
BERRIEN	MACKINAC	ST CLAIR
CHARLEVOIX	MACOMB	TUSCOLA
CHEBOYGAN	MANISTEE	VAN BUREN
CHIPPEWA	MARQUETTE	WAYNE
DELTA	MASON	

SUMI5002A 01/29/1992

	Rates	Fringes
SELF-PROPELLED HOPPER DREDGES:		
Drag tender	8.78	4.23 + a
a. Nine paid holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Paul Hall's Birthday (Aug. 20th), Veterans Day, Thanksgiving Day and Christmas Day.		
-----		
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
=====		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).		

-----  
In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
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With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

MAUMEE BAY, TOLEDO, LUCAS COUNTY, OHIO  
SURVEY CONTROL DATA (44 SHEETS)

TO ACCESS THE MAUMEE BAY  
SURVEY CONTROL DATA,  
GO TO "PLANS" ON THE MENU BAR  
AND SELECT "MAUMEE BAY CONTROL DATA"

SEE SAFETY MANUAL LISTED UNDER SPECS

**CONTRACTOR ACCIDENT PREVENTION PLAN (APP) CHECKLIST** (EM 385-1-1, Appendix-A)

NOTE: 1. Contractor will complete Checklist and Submit with their APP.

NOTE: 2. LRB-SO will review Contractor APP and return to PM / COR.

NOTE: 3. Contractor APP's ARE NOT APPROVED by the USACE, only found as Acceptable or Non-Acceptable.

Safety Office Review Status: ACCEPTED BY-DATE: \_\_\_\_\_ NOT ACCEPTED BY/DATE: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Project Title & Location:	Included ?			Page(s)
	Yes	No	N/A	
<b>ALL CHECKLIST ITEMS WILL BE COMPLETED!</b>				
<b>1. SIGNATURE SHEET. Title, signature, and phone number of the following:</b>				
a. plan preparer (corporate safety staff person, QC);				
b. plan approval, e.g., owner, company president, regional vice president (HTRW activities require approval of a Certified Industrial Hygienist (or qualified Industrial Hygiene personnel for in-house USACE activities; a Certified Safety Professional (or qualified USACE safety personnel for in-house work) may approve the plan for operations involving UST removal where contaminants are known to be petroleum, oils, or lubricants);				
c. plan concurrence (provide concurrence of other applicable corporate and project personnel (contractor)), e.g., Chief of Operations, Corporate Chief of Safety, Corporate Industrial Hygienist, project manager or superintendent, project safety professional, project QC.				
<b>2. BACKGROUND INFORMATION. List the following:</b>				
a. contractor;				
b. contract number;				
c. project name;				
d. brief project description, description of work to be performed, and location (map);				
e. contractor accident experience (provide information such as EMR, OSHA 200 Forms, corporate safety trend analyses);				
f. listing of phases of work and hazardous activities requiring activity hazards analyses.				
<b>3. STATEMENT OF SAFETY AND HEALTH POLICY.</b> (In addition to the corporate policy statement, a copy of the corporate safety program may provide a significant portion of the information required by the accident prevention plan.)				
<b>4. RESPONSIBILITIES AND LINES OF AUTHORITIES.</b>				
a. Identification and accountability of personnel responsible for safety - at both corporate and project level (contracts specifically requiring safety or industrial hygiene personnel should include a copy of their resume - the District Safety and Occupational Health Office will review the qualifications for acceptance).				
b. Lines of authority				
<b>5. SUBCONTRACTORS AND SUPPLIERS. Provide the following:</b>				
a. identification of subcontractors and suppliers (if known);				
b. means for controlling and coordinating subcontractors and suppliers;				
c. safety responsibilities of subcontractors and suppliers.				
<b>6. TRAINING.</b>				
a. List subjects to be discussed with employees in safety indoctrination.				
b. List mandatory training and certifications which are applicable to this project (e. g., explosive actuated tools, confined space entry, crane operator, diver, vehicle operator, HAZWOPER training and certification, personal protective equipment) and any requirements for periodic retraining/recertification.				
c. Identify requirements for emergency response training.				



**CONTRACTOR ACCIDENT PREVENTION PLAN (APP) CHECKLIST** (EM 385-1-1, Appendix-A)

NOTE: 1. Contractor will complete Checklist and Submit with their APP.

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Safety Office Review Status: ACCEPTED BY-DATE: \_\_\_\_\_ NOT ACCEPTED BY/DATE: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Project Title & Location:	Included ?			Page(s)
	Yes	No	N/A	
d. Outline requirements (who attends, when given, who will conduct etc.) for supervisory and employee safety meetings.				
<b>7. SAFETY AND HEALTH INSPECTIONS. Provide details on:</b>				
a. who will conduct safety inspections (e.g., project manager, safety professional, QC, supervisors, employees, etc.), when inspections will be conducted, how the inspections will be recorded, deficiency tracking system, follow-up procedures, etc;				
b. any external inspections/certifications which may be required (e.g., Coast Guard).				
<b>8. SAFETY AND HEALTH EXPECTATIONS, INCENTIVE PROGRAMS, AND COMPLIANCE.</b>				
a. The company's written safety program goals, objectives, and accident experience goals for this contract should be provided.				
b. A brief description of the company's safety incentive programs (if any) should be provided.				
c. Policies and procedures regarding noncompliance with safety requirements (to include disciplinary actions for violation of safety requirements) should be identified.				
d. Provide written company procedures for holding managers and supervisors accountable for safety.				
<b>9. ACCIDENT REPORTING. The contractor shall identify who shall complete the following, how, and when:</b>				
a. exposure data (man-hours worked);				
b. accident investigations, reports and logs;				
c. immediate notification of major accidents.				
<b>10. MEDICAL SUPPORT. Outline on-site medical support and off-site medical arrangements.</b>				
<b>11. PERSONAL PROTECTIVE EQUIPMENT. Outline procedures (who, when, how) for conducting hazard assessments and written certifications for use of personal protective equipment.</b>				
<b>12. PLANS (PROGRAMS, PROCEDURES) REQUIRED BY THE SAFETY MANUAL (as applicable).</b>				
a. Hazard Communication (HAZCOM) Program (01.B.04);				
b. Emergency Response Plans that include:				
- procedures & test (01.E.01)				
- spill plans (01.E.06.A.02)				
- firefighting plan (01.E.01, 19.A.04)				
- posting of emergency telephone numbers (01.E.04)				
- wildfire prevention plan (09.K.01)				
- man overboard/abandon ship (19.A.04)				
c. layout plans (04.A.01);				
d. respiratory protection plan (05.E.01);				
e. health hazard control program (06.A.02);				
f. lead abatement plan (06.B.05 & specifications);				

**CONTRACTOR ACCIDENT PREVENTION PLAN (APP) CHECKLIST** (EM 385-1-1, Appendix-A)

NOTE: 1. Contractor will complete Checklist and Submit with their APP.

NOTE: 2. LRB-SO will review Contractor APP and return to PM / COR.

NOTE: 3. Contractor APP's ARE NOT APPROVED by the USACE, only found as Acceptable or Non-Acceptable.

Safety Office Review Status: ACCEPTED BY-DATE: \_\_\_\_\_ NOT ACCEPTED BY/DATE: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Project Title & Location:	Included ?			Page(s)
	Yes	No	N/A	
g. asbestos abatement plan (06.B.05 & specifications);				
h. abrasive blasting (06.H.01);				
i. confined space (06.I);				
j. hazardous energy control plan (12.A.07);				
k. critical lift procedures (16.C.17);				
l. contingency plan for severe weather (19.A.03);				
m. access and haul road plan (22.I.10);				
n. demolition plan (engineering and asbestos surveys) (23.A.01);				
o. emergency rescue (tunneling) (26.A.05);				
p. underground construction fire prevention and protection plan (26.D.01)				
q. compressed air plan (26.I.01)				
r. formwork and shoring erection and removal plans (27.B.02)				
s. lift slab plans (27.D.01)				
t. Site Health & Safety Plan(for HTRW work an SSHP must be submitted and shall contain all information required by the accident prevention plan - two documents are not required (28.B.01);				
u. blasting plan (29.A.01);				
v. diving plan (30.A.13);				
w. plan for prevention of alcohol and drug abuse (Defense Federal Acquisition Regulation Supplement Subpart 252.223-7004, Drug-Free Work Force);				
<b>X. FALL PROTECTION PLAN &amp; PROCEDURES (21.A-G.)</b>				
<b>13.</b> The contractor shall provide information on <b>how</b> they will meet the requirements of major sections of EM 385-1-1 in the accident prevention plan. Particular attention shall be paid to excavations, scaffolding, medical and first aid requirements, sanitation, personal protective equipment, fire prevention, machinery and mechanized equipment, electrical safety, public safety requirements, and chemical, physical agent, and biological occupational exposure prevention requirements. <b>Detailed site specific hazards and controls shall be provided in the activity hazard analysis for each phase of the operation.</b>				

**SAMPLE ACCIDENT PREVENTION PLAN TEMPLATE**

**ITEMS INDICATED IN RED TEXT SHOULD BE COMPLETED BY THE CONTRACTOR. INDICATE “N/A” IF NOT APPLICABLE.**

NOTE: A Microsoft® Word file of the Sample Accident Prevention Plan Template is included in the folder entitled “Template” on this CD-ROM.

(sample)  
**ACCIDENT PREVENTION PLAN**  
*Name of Project*  
**Contract No. DACW49-##-#-####**  
*Contractor*

**1. SIGNATURE SHEET.**

This Accident Prevention Plan was

Prepared By:

---

*Name*  
*Title of corporate safety staff person*

Approved By:

---

*Name*  
*President*

Plan Concurrence By:

---

*Name*  
CQC Manager

---

*Name*  
Project Superintendent

---

*Name*  
Project Safety Manager

## 2. BACKGROUND INFORMATION

- a. Contractor :       *Name*  
                              *Address*  
                              *City, State Zip*
- b. Contract Number   DACW49-##-#-####
- c. Project Name:   *Enter Name of Project*
- d. Project Description: *Enter description of work*
- e. The Major definable features of work are listed in the Quality Control Plan. An Activity Hazard Analysis (AHA) will be prepared for each Major Definable Feature of Work. AHAs will be prepared in accordance with the format shown on page 4 of EM 385-1-1 and will be presented and discussed at the Preparatory Phase Inspection for the applicable feature of work.

## 3. STATEMENT OF SAFETY AND HEALTH POLICY

*Enter statement which describes the company's commitment to safety.*

## 4. RESPONSIBILITIES AND LINES OF AUTHORITIES

- a. *Name - Describe responsibility and accountability of personnel responsible for safety at corporate level.*
- b. *Name - Describe responsibility and accountability of personnel responsible for safety at project level.*
- c. Lines of authority - *Describe lines of authority (as related to safety) for this project.*

## 5. SUBCONTRACTORS AND SUPPLIERS.

- a. The following subcontractors will be working on this project:
  - 1. *List (or none)*
- b. The CQC System Manger **NAME** will be responsible for controlling and coordinating subcontractors and suppliers.
- c. All subcontractors and suppliers performing work on site will be expected to conform to the requirements of this Accident Prevention Plan and to the requirements of EM 385-1-1.

## 6. TRAINING.

- a. Each employee will receive a safety indoctrination consisting of a thorough review of applicable AHA's.
- b. The following is a list of training and certifications which are applicable to this project:

1. Confined Space Entry
2. HAZWOPER Training and Certification
3. Personal Protective Equipment
4. First Aid and CPR
5. Man overboard rescue
6. Emergency Response Plan
7. *Other*

c. Weekly toolbox safety meeting will be conducted at *TIME* every *ENTER DAY OF WEEK*. Each on site worker will be required to attend. Attendance will be documented. *Name* will be responsible for conducting these meetings.

## **7. SAFETY AND HEALTH INSPECTIONS.**

a. *Name* will conduct site safety inspections on a daily basis. Any noted deficiencies will be identified on that day's CQC Report. Deficiencies will be tracked using the table included as Attachment # to this Accident Prevention Plan.

b. The following external inspections/certifications are required for this project:

*List or enter "None Required".*

## **8. SAFETY AND HEALTH EXPECTATIONS, INCENTIVE PROGRAMS, AND COMPLIANCE**

a. *Provide a statement or statements describing the company's written safety program goals, objectives, and accident experience goals for this contract.*

b. *Provide a brief description of the company's safety incentive programs (if any). If none, so state.*

c. *Provide a discussion of the company's policies and procedures regarding noncompliance with safety requirements (to include disciplinary actions for violation of safety requirements).*

d. *Provide written company procedures for holding managers and supervisors accountable for safety.*

## **9. ACCIDENT REPORTING**

a. *Name* will submit Monthly Manhour Exposure Reports to the Contracting Officer no later than the 5th work day of each month. The report encompasses on-site work including all hourly and salaried employees. The report will include all subcontractors working on this project.

b. *Name* will report all accidents and injuries no matter how slight. Furthermore, *Name* will immediately notify the Contracting Officer and District Safety Officer of any incidents involving fatality or permanent total disability, accidents in which three or more persons are hospitalized, accidents that result in property damage in excess of \$100,000 or any accident regardless of the consequences, if it is suspected that it will result in unfavorable criticism of the Corps of Engineers.

## 10. MEDICAL SUPPORT

a. A list of emergency telephone numbers and a map of directions to the nearest hospital(s) is included in the Emergency Response Plan section of this Accident Prevention Plan.

b. First aid kits will be maintained on site as required in Section 3 of EM 385-1-1.

*(Provide plan view showing location of all first aid kits and fire extinguishers.)*

c. At least two employees on each shift will be qualified to administer first aid and CPR. Individuals who are required to work alone in remote areas shall be trained in first aid. The following employees are certified in First Aid and CPR and a copy of their current certificates are included as Attachment # to this Accident Prevention Plan:

1. *List*

## 11. PERSONAL PROTECTIVE EQUIPMENT.

a. *Outline procedures (who, when, how) for conducting hazard assessments and written certifications for use of personal protective equipment.*

## 12. PLANS (PROGRAMS, PROCEDURES) REQUIRED BY THE SAFETY MANUAL (as applicable)

### a. Hazard Communication (HAZCOM) Program (01.B.04)

Included as Attachment # to this Accident Prevention Plan is a written hazard communication program addressing as a minimum, the following: training (to include potential safety and health effects from exposure), labeling, current inventory of hazardous chemicals on site, and the location and use of Material Safety Data Sheets (MSDSs).

### b. Emergency Response Plans (01.E.01, 01.E.05, 06.A.02, 19.A.04, 09.K.01 and 09.K.02)

An Emergency Response Plan is included as Attachment # to this Accident Prevention Plan. This Emergency Response Plan includes:

An Emergency Response Plan to ensure employee safety in case of fire or other emergency, including emergency telephone numbers and reporting instructions for ambulance, physician, hospital, fire, and police. Also a map of directions to the nearest hospital(s). This list and map shall be conspicuously posted at the work site

A Spill Response Plan including organizations with telephone numbers of individuals to contact in the event of a spill.

### c. Layout plans (04.A.01) *(If applicable)*

Plans for the layout of temporary construction buildings, facilities, fencing and access routes and anchoring systems for temporary structure are included as Attachment # to this Accident Prevention Plan.

### d. Respiratory Protection Plan (05.E.01) *(If applicable)*

*Name of Company's* Respiratory Protection Plan is included as Attachment # to this Accident Prevention Plan.

**e. Health Hazard Control Program (06.A.02)**

Activity Hazard Analyses (AHA's) shall consider all substances, agents and environments that present a hazard and will recommend hazard control measures. Engineering and administrative controls shall be used to control hazards. In cases where engineering or administrative controls are not feasible, PPE may be used. The AHA shall serve as certification that a hazard assessment has been conducted.

Operations, materials, and equipment involving potential exposure to hazardous substances, agents or environments will be evaluated by a qualified industrial hygienist, or other competent person, to formulate a hazard control program. The following hazardous substances, agents or environments have been identified:

*List (This list may be revised during the performance of work on this project.)*

**f. Abrasive Blasting (06.H.01) (If applicable)**

Operational procedures for abrasive blasting operations are included as Attachment # to this Accident Prevention Plan. Employees will be trained in these procedures and will be advised where these written procedures and health information are available on the premises for review.

**g. Confined Space (06.I) (If applicable)**

*Name* will inspect the work area and evaluate the potential for permit-required confined spaces (PRCSs). This inspection will occur before work begins, whenever the characteristics of spaces change in a way that could lead to a reclassification as a PRCS and at least annually. A list of confined spaces (permit required and non-permit required) will be maintained on site.

**h. Hazardous Energy Control Plan (12.A.07) (If applicable)**

A Hazardous Energy Control Plan meeting the requirements of section 12.A.07 of EM 385-1-1 is included as Attachment # to this Accident Prevention Plan.

**i. Contingency Plan for Severe Weather (19.A.03)**

A severe weather plan for floating plant is included as Attachment # to this Accident Prevention Plan.

**j. Access and Haul Road Plan (21.I.10) (If applicable)**

An access and haul road plan meeting the requirements of section 21.I.10 of EM 385-1-1 is included as Attachment # to this Accident Prevention Plan.

**k. Diving Plan (30.A.13) (If applicable)**

It is recognized that a Dive Plan is required for each separate diving operation. The Dive Plan will be prepared and submitted to the Government for review and approval a sufficient time in advance of each required dive. Diving will not occur until the Dive Plan is approved by the Government.



**I. Plan for Prevention of Alcohol and Drug Abuse (Defense Federal Acquisition Regulation Supplement Subpart 252.223-7004, Drug-Free Work Force)**

*Name of Company*'s plan for prevention of Alcohol and Drug Abuse is included as Attachment # to the Accident Prevention Plan. This plan meets the minimum requirements of DFAR 252.223-7004.

**13. Detailed site specific hazards and controls will be provided in the activity hazard analysis (AHA) for each phase of the operation (each Major Definable Feature of Work as defined by the Contractor Quality Control Plan). The AHA's will provide information on how the requirements of major sections of EM 385-1-1 will be met. Particular attention shall be paid to excavations, scaffolding, medical and first aid requirements, sanitation, personal protective equipment, fire prevention, machinery and mechanized equipment, electrical safety, public safety requirements, and chemical, physical agent, and biological occupational exposure prevention requirements. AHA's will be prepared utilizing the format shown on page 4 of EM 385-1-1.**

Attachments (*where applicable*)

- Attachment # - Accident History
- Attachment # - Safety Deficiency Tracking Table
- Attachment # - Emergency Response Plan
- Attachment # - First Aid and CPR certificates
- Attachment # - Hazard Communication (HAZCOM) Program
- Attachment # - Layout plans
- Attachment # - Respiratory Protection Plan
- Attachment # - Abrasive Blasting Plan
- Attachment # - Permit-Required Confined Space Program
- Attachment # - Severe Weather Plan
- Attachment # - Plan for Prevention of Alcohol and Drug Abuse

## **ENVIRONMENTAL PROTECTION PLAN TEMPLATE**

**ITEMS INDICATED IN RED TEXT ARE TO BE COMPLETED BY THE CONTRACTOR. INDICATE “N/A” IF NOT APPLICABLE.**

NOTE: A Microsoft® Word file of the Environmental Protection Plan Template is included in the folder entitled “Template” on this CD-ROM.

# ENVIRONMENTAL PROTECTION PLAN

Contract No. DACW49-##-##-####

Name of Contract

Name of Contractor

## A. APPLICABLE LAWS, REGULATIONS, AND PERMITS

The following is a list of Federal, State, and local laws, regulations, and permits concerning environmental protection, pollution control, and abatement that are applicable to the proposed dredging operations:

Federal Water Pollution Control Act of 1972  
Section 114 of the Clean Air Act  
U.S. Coast Guard Regulation (33 CFR 156.120) Fuel Oil Transfer  
EM 385-1-1, Spills and Clean up  
Clean Water Act of 1977 (PL95-217) (33 U.S.C. 1344)  
Marine Protection, Research, and Sanctuaries Act of 1972 (PL 92-532)  
National Environmental Policy Act of 1969 (PL 91-910) (42USC 4321)  
Fish and Wildlife Act of 1956 (16 U.S.C. 760c-760g)  
Fish and Wildlife Coordination Act of 1968 (16 U.S.C. 661-665c)  
Endangered Species Act of 1973 (16 U.S.C. 1531-1543)  
Migratory Marine Game Fish Act of 1968 (16 U.S.C. 760c-760g)  
National Historic Preservation Act of 1966 (16 U.S.C. 470)  
Clean Air Act  
Land and Water Conservation Fund Act of 1965  
Watershed Protection and Flood Protection Act  
Wild and Scenic Rivers Act of 1962  
Rivers and Harbors Act of 1899, as amended  
Coastal Zone Management Act  
[Insert others as applicable]

## B. PROTECTION OF ENVIRONMENTAL RESOURCES

### 1. Protection of Land Resources

#### a. Protection of the Landscape

- The following land resources to be preserved within the work area have been identified:

[Insert applicable land resources to be preserved within the work area]

- No removal, cutting, defacing, injury, or destruction to any land resources, including trees, shrubs, vines, grasses, topsoil and landforms, will occur without special permission from the Contracting Officer. No ropes, cables, or guys will be fastened or attached to any trees for anchorage unless specifically authorized. Effective protection for all land resources will be provided at all times.
- The landscape will be protected at all times. Any features indicated and defined on the drawings will be preserved and will be clearly identified by marking with tape or other approved techniques.
- Solid wastes will be placed in containers and will be emptied on a regular basis. All solid waste will be transported to a landfill and disposed of in compliance with Federal, State and local requirements, as indicated in Paragraph D, "Waste Disposal Area(s)".
- Chemical waste will be stored in corrosion resistant containers and disposed of in accordance with Federal, State, and local requirements. Discarded materials will be disposed of as approved by the Contracting Officer, and in compliance with Hazardous Waste Laws and Regulations as indicated in Paragraph D, "Waste Disposal Area(s)".
- Disposal areas on government property will be managed and controlled in accordance with the Contract Specifications and other directions.
- [Insert other applicable procedures to be implemented]

b. Preservation and Protection of Historical, Archaeological and Cultural Resources

- Known historical, archaeological and cultural resources within the Contractor's work areas are indicated as follows:  
[Insert applicable historical, archaeological, and cultural resources known to be within the work area]
- Protection for these resources will be provided as follows:  
[Insert applicable protective measures to be employed]
- If, during dredging activities, items are observed that might have historical or archaeological value, such observations will be immediately reported to the

Contracting Officer so that the appropriate authorities may be notified and a determination can be made as to their significance and what, if any, special disposition of the finding should be made. All activities that may result in the destruction of these resources will be stopped, and all employees will be prevented from trespassing on, removing, or otherwise damaging such resources.

c. Post Construction Clean-Up

- All areas impacted by the dredging activities will be restored to a condition equal to or better than that which existed prior to the dredging operations. Final inspection of each area will be accomplished and all deficiencies will be corrected expeditiously.

d. Restoration of Landscape Damage

- All landscape features damaged outside the limits of construction will be restored as soon as practicable and in accordance with the Contract Specifications.

**2. Protection of Air Resources**

- a. All dredging activities will be kept under surveillance at all times. All activities, equipment, processes and work operated or performed will be done in strict compliance with all applicable air pollution standards. Burning of trash on site will not be permitted.
- b. All equipment will be operated so that exhaust emissions are held at or below satisfactory levels. All equipment will be properly maintained and tuned for efficiency.
- c. All equipment used in this work will be equipped with satisfactory mufflers and sound abatement devices to reduce engine noise. The dredging operations will be conducted so as to comply with Federal, State, and local laws pertaining to noise.

d. [Insert other applicable procedures to be implemented]

**3. Protection of Water Resources**

a. Prevention of Water Pollution

- All dredging activities will be kept under surveillance, management, and control, to prevent pollution to surface and ground waters. Management

techniques to prevent pollution will be implemented as follows:

[Insert applicable protective measures to be employed]

- Only materials and equipment that do not violate water pollution standards will be used.
- All areas affected by dredging activities will be monitored on a continuous basis.
- [Insert other applicable procedures to be implemented]

b. Ground Water Protection

- Dredging activities will be conducted so as to preclude ground water pollution. Refer to Paragraph M.2, "Fueling Oil Spill Prevention and Clean Up".
- [Insert other applicable procedures to be implemented]

c. Bilge Pumping

- Any oil discovered in the bilge water will be immediately absorbed using Coast Guard-approved absorbent material and under no circumstances will be pumped into waterways.

**4. Protection of Fish and Wildlife Resources**

- a. Dredging operations will be kept under surveillance, management and control so no interference or damage will occur to fish and wildlife.
- b. Native habitat or adjacent areas will not be disturbed.
- c. Measures will be taken for protection of species of fish and wildlife that require specific attention.
- d. [Insert other applicable procedures to be implemented]

**C. PROTECTION OF ENVIRONMENTAL RESOURCES**

The following procedures will be implemented to provide the required environmental protection, to comply with the applicable laws and regulations, and to correct pollution due to accident, natural causes, or failure to follow the procedures of this Environmental Protection Plan:

[Insert applicable procedures to be implemented]

**D. WASTE DISPOSAL AREA(S)**

1. Solid and/or liquid waste will be disposed of by the following:  
[Insert name, address, and telephone number of applicable disposal facility]
2. Chemical waste will be disposed of by the following:  
[Insert name, address, and telephone number of applicable disposal facility]
3. Copies of the licenses/permits of the respective disposal facilities are included in Attachment 1.

**E. AREA DRAWINGS AND PLANS**

As necessary, drawings showing locations of any proposed excavations or embankments for haul roads, material storage, sanitary facilities, and stockpiles of excess spoil materials to assure compliance with this plan have been included in Attachment 2. A work area plan is included, showing the proposed activity in each portion of the area identifying areas of limited or prohibited access.

**F. ENVIRONMENTAL MONITORING PLANS**

1. Equipment and vehicles will be monitored and kept in proper operating condition to minimize emissions. Equipment will be shut down when not in use.
2. Heating devices will be checked and will be of a type that will not cause pollution.
3. Frequent visual checks will be made for any possible oil leaks/spills, and if found, immediate appropriate action, including reporting, will be taken.
4. Sound and noise pollution will be kept under surveillance and control to minimize damage to the environment by noise.
5. [Include other monitoring plans as appropriate (i.e., turbidity levels, fish and wildlife monitoring, etc.)]

**G. TRAFFIC CONTROL PLAN**

1. If vehicular transportation is to be utilized, the following traffic control measures will be implemented:  
[Insert applicable procedures to be implemented]

2. Traffic control measures at the project site for off-road, state, city and highway traffic may not be applicable, however navigational aids for dredging will be provided as described below:

[Insert applicable procedures to be implemented]

## **H. METHODS OF SURFACE AND GROUNDWATER PROTECTION**

Methods of protecting surface and groundwater during dredging activities are described in Paragraph B.3, "Protection of Water Resources".

## **I. PROPOSED ACTIVITY PLAN**

As applicable, the plan showing the proposed activity in each portion of the work area is described in Paragraph E, "Area Drawings and Plans".

## **J. RECYCLING AND WASTE PREVENTION PLAN**

Every effort will be made to participate in State and local government sponsored recycling programs to reduce the volume of solid waste materials at the source. The following measures will be implemented to reduce consumption of energy and natural resources:

[Insert applicable procedures to be implemented]

## **K. TRAINING**

Personnel involved in dredging activities will be trained in all phases of environmental protection, including, but not limited to, the following:

1. Methods of detecting and avoiding pollution.
2. Familiarization with pollution standards.
3. Installation and care of facilities to ensure adequate continuous environmental pollution control.
4. Instruction in proper use and care of monitoring devices and abatement equipment.
5. Knowledge of all applicable Federal, State, and Local laws, regulations, and permits.
6. [Include other training requirements as appropriate]

## **L. SPECIES REQUIRING SPECIAL ATTENTION**



As described in the project's Section 404 Evaluation, presented below is a list fish and wildlife species that require special attention, along with measures for their protection:

[Insert applicable species, along with protective measures to be implemented]

## **M. SPILL RESPONSE PLAN**

### **1. General**

- a. The following is a list of contaminants that may be encountered/stored onboard vessels during the course of dredging operations, along with the maximum quantities stored and trigger-point quantities at which each contaminant becomes subject to a mandatory reporting procedure:

[Insert applicable contaminants, along with maximum stored quantities and reporting quantities]

- b. If a reportable contaminant spill occurs, immediate notification will be made to the Contracting Officer and other applicable regulatory agencies. The notification will include a description of the material spilled, quantities, location, time, date, containment procedures used, and the proposed cleanup procedures. The following procedures will be used for communicating with the press and other governmental agencies having an interest:

[Insert applicable communication procedures]

- c. The following points of contact will be used for notification, reporting, and communication procedures:

[Insert names, addresses, telephone number, and contact persons for each possible point of contact (i.e., Contracting Officer, U.S. Coast Guard, applicable regulatory agencies, cleanup/response personnel, etc.)]

- d. The following materials and equipment will be immediately available at the job site, to allow cleanup work of the potential hazard(s) identified:

[Insert applicable materials and equipment]

- e. The following methods and procedures will be used for expeditious contaminant cleanup:

[Insert applicable procedures to be implemented]

### **2. Fueling Oil Spill Prevention and Cleanup**

- a. Necessary measures will be taken to prevent oil or other hazardous substances from entering the ground, drainage, or other local bodies of water. Measures will include, but not be limited to, the following:

- Use of a 4-foot square, 16-gauge pan with an 8-inch minimum depth (or comparable method) to ensure that no ground contamination takes place.
  - Use of diversionary structures or equipment for preventing oil discharges from reaching a watercourse.
  - Pans will be cleaned by an approved method immediately after transferring wastes to other containers for proper disposal.
  - [Insert other applicable procedures to be implemented]
- b. Fueling will be done by threaded and cam locked fuel hose. If a spill occurs, immediate action will be taken for containment and cleanup. Such spills will be immediately reported to the Contracting Officer. One or more of the following systems will be provided at each oil storage site, each system capable of containing the contents of the largest single tank:
- Dikes, berms, or retaining walls.
  - Culverting, curbing, guttering, or other similar structures.
  - Spill diversion ponds.
  - Absorbent materials.
  - [Insert other applicable procedures to be implemented]

## **N. SUBCONTRACTORS**

Any subcontractor engaged in the performance of activities associated with this contract will be required to be familiar with this Environmental Protection Plan and to comply with its requirements.

## **O. NONCOMPLIANCE NOTICE**

If a notification of noncompliance is received from the Contracting Officer of any rule, regulation, or element within the Environmental Protection Plan, the Contracting Officer will be informed of the proposed corrective action, and such action will be taken upon approval.

## **CONTRACTOR QUALITY CONTROL PLAN TEMPLATE**

**ITEMS INDICATED IN RED TEXT ARE TO BE COMPLETED BY THE CONTRACTOR. INDICATE “N/A” IF NOT APPLICABLE.**

NOTE: A Microsoft® Word file of the Contractor Quality Control Plan Template is included in the folder entitled “Template” on this CD-ROM.

# CONTRACTOR QUALITY CONTROL PLAN

Contract No. DACW49-##-#-####

Name of Contract

Name of Contractor

## A. Quality Control Organization

Name, President

Name, Vice President

Name, Quality Control System Manager

Name, Alternate Quality Control System Manager

Name, Site Superintendent

Name, Responsible for preparation and certifying pay estimates

Name, Responsible for executing contract modification

Name, Responsible for certifying contract submittals

A chart showing lines of authority is attached to this CQC Plan.

## B. Resumes of the following individuals are attached to this CQC Plan:

1. CQC System Manager
2. Alternate CQC System Manager
3. Individual(s) responsible for certifying payment requests.
4. Individual(s) responsible for executing contract modifications.
5. Individual(s) responsible for certifying contract submittals.
6. Others

C. [Applicable if the contract amount exceeds \$1 million] The CQC System Manager and Alternate CQC System Manager have completed the course entitled "Construction Quality Management For Contractors". Copies of their course certificates are attached to this CQC Plan.

D. A copy of the letter to the CQC System Manager and Alternate CQC System Manager, signed by an authorized official of the firm, which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract is attached to this CQC Plan.

E. Copies of the CQC System Manager letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities are attached to this CQC Plan.

## F. The following subcontractors will be utilized on this project:

Name of subcontractor

Work to be completed by this subcontractor

G. The CQC staff will implement the three phase control system for all aspects of the work specified. The three phase control system is described in detail in specification section 02481. Additionally, the following procedures will be used to monitor dredging quantities and locations to ensure that limits and quantities specified by the Contracting Officer are attained:

[Insert description of intended quantity and location monitoring procedures.]

H. The Major Definable Features of work for this project are identified in a table attachment to this CQC Plan.

I. For payment purposes, the Bid Items have been broken down into a Schedule of Values. The proposed Schedule of Values is identified in a table attachment to this CQC Plan.

J. Preparatory and Initial Phase inspections will be tracked utilizing the table attached to this CQC Plan.

K. Deficiencies will be tracked from identification through acceptable corrective action utilizing the table attached to this CQC Plan.

L. Submittals will be tracked utilizing the Submittal Register attached to this CQC Plan.

M. The CQC Report attached to this CQC Plan will be utilized. CQC Reports will be prepared daily and submitted to the Government Representative. Other reports to be attached to the daily CQC report are:

Preparatory Phase Inspection Checklist

Initial Phase Inspection Checklist

Others as appropriate

N. Plan of Operations - The following Plan of Operations will be used for dredging operations:

[Insert description of intended Plan of Operations to be implemented, including, but not limited to, equipment to be used, specific dredging areas, sequence of operations, cut lines and anticipated quantities, etc.]

O. List any other contract specific items

\_\_\_\_\_/Signature/\_\_\_\_\_

Name

Title

Attachments:

- Chart showing lines of authority
- Resumes
- CQC course certificates [If contract amount exceed \$1 million]
- Letter to the CQC System Manager and Alternate CQC System Manager
- CQC System Manager letters of direction
- Table: Major Definable Features of Work
- Table: Schedule of Values
- Table: Tracking - Preparatory and Initial Phase Inspections
- Table: Deficiency Tracking
- Submittal Register
- CQC Report
- Other QC reports

[INSERT CHART SHOWING LINES OF AUTHORITY]

[INSERT RESUMES]



[INSERT CQC COURSE CERTIFICATES IF CONTRACT AMOUNT EXCEEDS \$1  
MILLION]

[INSERT LETTER TO THE CQC SYSTEM MANAGER AND ALTERNATE CQC SYSTEM  
MANAGER]

[INSERT CQC SYSTEM MANAGER LETTERS OF DIRECTION]

**Contract No. DACW49-##-#-####**

### Name of Contract

**Name of Contractor**

## Major Definable Features of Work

[illegible]

**Contract No. DACW49-##-#-####**

**Name of Contract**

**Name of Contractor**

**Schedule of Values**

<b>Bid Item No.</b>	<b>Activity No.</b>	<b>Description</b>	<b>Feature ID No.</b>	<b>Amount</b>
		[Complete Table]		

The total amount of all activities under a Bid Item must equal the amount of the Bid Item.

Feature ID No. relates the Major Identifiable Feature of Work.

When the contract requires As-Built Record Drawings, include an activity and dollar amount.

**Name of Contract**  
**Name of Contractor**

**Name of Contractor**

## Tracking - Preparatory and Initial Phase Inspections

[illegible]

**Name of Contract**  
**Name of Contractor**

**Name of Contractor**

[illegible][illegible]

[INSERT COMPLETED SUBMITTAL REGISTER]



[INSERT CQC REPORT FORMS TO BE USED]

[INSERT OTHER QC REPORT FORMS AS APPLICABLE]



CONTRACT NO.
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MAUMEE BAY MAINTENANCE DREDGING, TOLEDO, OHIO

CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION			APPROVING AUTHORITY					
SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	A C T I O N  C O D E	DATE OF ACTION	DATE FWD TO APPR AUTH/  DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	A C T I O N  C O D E	DATE OF ACTION		

[illegible]